Datuk Seri Maglin Dennis D'Cruz & Ors v Tan Sri Datuk Seri M Kayveas & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22NCC-326–06 OF 2019
ONG CHEE KWAN JC
30 MARCH 2022

Civil Procedure — Abuse of process — Consent judgment — Whether consent judgment acquired to unlawfully obtain ownership of property and shares — Whether amounted to abuse of process of court — Whether consent judgment ought to be set aside — Whether damages ought to be awarded

Tort — Conspiracy — Conspiracy by unlawful means — Whether defendants conspired to deprive political party from shares of company ownership of property — Whether element of common intention adequately proved

This was an action filed by former members of myPPP ('myPPP' or 'the party'), a political party established under the Societies Act 1966 ('the Act') against the defendants for the tort of abuse of court process and conspiracy to injure by unlawful means designed to cause loss, harm and damage to the members. The action was taken by the plaintiffs in a representative capacity for and on behalf of the former members of myPPP. Bintang Iradat (M) Sdn Bhd ('Bintang Iradat') was a company incorporated in 2000 and was formed as the investment and corporate entity that acted for and on behalf of myPPP. From 1998, myPPP was headquartered at a building known as ('Wisma myPPP'). Sometime in 2003, when Wisma myPPP was put up for auction, myPPP utilising Bintang Iradat, paid 10% deposit for the purchase of Wisma myPPP. To finance the balance purchase price, Bintang Iradat sought a friendly loan from one Chong Chek Ah ('Chong'). As security for this friendly loan, the shares in Bintang Iradat were transferred in trust to Chong. In breach of the trust, Chong had wrongfully increased the share capital of Bintang Iradat and caused the shares in Bintang Iradat to be transferred to various of his nominees. Sometime in 2010, myPPP initiated a civil suit against the shareholders of Bintang Iradat and pursuant to the Federal Court's decision in Civil Appeal No 02–10 of 2012(W), the Federal Court held that Chong and his nominees held the shares in Bintang Iradat as constructive trustees for and on behalf of myPPP. Thus, it was the plaintiffs' case that whilst the legal ownership of Wisma myPPP was vested in Bintang Iradat, at all times Bintang Iradat held Wisma myPPP on trust for the party and the shares in Bintang Iradat were held on trust for myPPP. Sometime in 2018, there was a dispute with regard to the office bearers of myPPP. The Registrar of Societies ('ROS') found that the

validity of the office-bearers of myPPP was in doubt and cancelled the registration of the party because there were two different camps within the party holding themselves out as the rightful office-bearers. Both the camps were also unable to resolve their differences despite being directed to do so by the ROS. At the time of the de-registration, the directors and shareholders of Bintang Iradat were Datuk Seri Maglin (P1) who held 70,000 shares, Datuk Mohan (P6) who held 15,000 shares and Datuk Lau Beng Wei (D9) who held 15,000 shares. In the lead-up to the 14th General Election in 2018 ('GE14'), it was alleged that Tan Sri Kayveas (D1) who was the President of the party at the material time had unilaterally gave up the pursuits of Parliamentary and State seats for the party. As a consequence of Tan Sri Kayveas's (D1) actions, myPPP's Supreme Council received two letters of complaint alleging that Tan Sri Kayveas's (D1) conduct in unilaterally abandoning the seats was contrary to the party's Constitution ('the Constitution'). Consequently, Tan Sri Kayveas's (D1) was expelled as President of myPPP and all other positions held in the party including his membership. The Disciplinary Committee also informed Tan Sri Kayveas (D1) that he was not allowed to transfer or dispose all or any assets belonging to the party. Tan Sri Kayveas (D1) then resigned from myPPP, however, he subsequently claimed that he withdrew his resignation. At this point, it was an open fact that there existed two camps, namely Tan Sri Kayveas (D1)'s camp and Datuk Seri Maglin's camp (P1). The two camps held their respective AGMs. Tan Sri M Kayveas's camp purportedly held a Supreme Council ('AMT') meeting on 25 May 2018 and then proceeded to hold an Annual General Meeting (AGM) on 27 May 2018. Datuk Seri Maglin's camp in turn organised an AGM on 26 May 2018. The ROS rejected the AGM Minutes of both camps premised upon the fact that there was a leadership tussle within myPPP. Whilst the leadership tussle was being played out, unbeknownst to the plaintiffs, a civil suit was filed in the High Court ('Suit 796'). Suit 796 was purportedly filed by Datuk Chandrakumaran (D4) against Dato' Ly (D5) who were part of Tan Sri Kayveas's camp. None of the plaintiffs had notice of Suit 796, or of its filing. They were not named as defendants, nor were they served. Suit 796 was subsequently transferred to the Commercial Court and a fresh case number was issued ie ('Suit 551'). As Suit 796 (renumbered to Suit 551) was a surreptitiously proceeding, myPPP had its registration cancelled. A consent judgment was then recorded in Suit 796. The consent judgment was systematically utilised to remove all shares in Bintang Iradat (D3) and to have the same ultimately lodged in Kayveas Holdings Sdn Bhd (D2), which was conducted through six steps: (a) change of company secretary; (b) removal of directors; (c) transfer of shares; (d) change of business address; (e) abolishment of memorandum and articles of association; and (f) transfer of all shares to Kayveas Holdings. The plaintiffs then commenced this present action and applied for and obtained an injunctive order ex parte to refrain any dealings with Wisma myPPP and the shares of Bintang Iradat (D3). The ex parte order was converted into an ad interim order. Notwithstanding the injunctive orders, at the trial of this Suit, it was disclosed that Tan Sri

Kayveas (D1) still sought to deal with Wisma myPPP. Subsequently, the defendants filed applications to strike out the plaintiff's action herein on the ground that the plaintiffs had no locus standi to commence the present action. According to the defendants, the plaintiffs had no proprietary interests in the assets of myPPP. The court had dismissed the defendants' striking out applications and the Court of Appeal dismissed the defendants' appeals and affirmed this court's decisions dismissing the defendants' striking out applications. Further, whilst the defendants' striking out applications were being litigated, unbeknownst to the plaintiffs, various proceedings were filed in different parts of the country involving myPPP and/or pertaining to its de-registration status. These proceedings were all taken out by persons aligned to Tan Sri Kayveas (D1)'s camp or involved persons aligned to him. The effect of these proceedings was to scuttle the plaintiffs' present action and to exclude the plaintiffs from being members of the Supreme Council of myPPP once its de-registration was cancelled. One of the consequences of these proceedings was that once myPPP was re-instated, the plaintiffs' locus standi to continue with the present action would be adversely impacted. In the present suit, the plaintiffs' pleaded claim was that the defendants, acting in concert and pursuant to a conspiracy to injure by unlawful means, had unlawfully caused: (i) the shares in Bintang Iradat (D3); and (ii) Wisma myPPP to fall under the control of Tan Sri Kayveas (D1).

Held, allowing the plaintiffs' claim in part:

(1) The effect of the de-registration was that all the office bearers of the party would cease to have any capacity and authority to act for and on behalf of the party. In Suit 796, Datuk Chandrakumanan (D4) had filed the action in his capacity as the Vice President of the party and Dato' Ly (D5) in turn was sued in his capacity as the Secretary General of the party. Both the parties would have lost their capacity and authority to act in their respective capacities once the party was deregistered. Yet, neither of them had disclosed the fact of the party's de-registration to the judge when the consent judgment was recorded. Further, Datuk Chandrakumanan (D4)'s position had already been terminated by a unanimous decision of the party's Supreme Council. The party's Supreme Council had also unanimously terminated Datuk Chandrakumanan (D4) as a member of the party. Accordingly, Datuk Chandrakumanan (D4) did not have the locus standi to institute Suit 796 on behalf of the party, to begin with. This fact was also not disclosed to the court at all. Hence, as the consent judgment was obtained without disclosure to the court, it ought to be set aside (see paras 101–104).

(2) Although, in the AGM, Datuk Chandrakumanan (D4) was purportedly elected as the Vice President of the party, the said AGM was never recognised by the ROS. The validity of the AGM was hotly disputed by Datuk Maglin (P1)'s camp. In any case, the attempt by Datuk

Chandrakumanan (D4) to have his position as the Vice President of the party recognised and validated in the KL JR Suit was dismissed and no appeal was filed against the dismissal. The entire Suit 796 was nothing more than a contrived suit filed in the High Court to take advantage of the court process to seize control of Wisma myPPP and to place the property in the sole custody of Tan Sri Kayveas (P1). The intention was clearly to use the imprimatur of the High Court as the means to cause the transfer of the shares in Bintang Iradat (D3) registered in the name of Datuk Seri Maglin (P1) and Datuk Mohan (P6) and to change the directorships of the company to persons aligned to Tan Sri Kayveas (P1) (see paras 105–107).

(3) Although the prayers in Suit 796 affected both Datuk Seri Maglin (P1) and Datuk Mohan (P6) as the registered shareholders and directors of Bintang Iradat (D3), neither of them was named as a party to Suit 796. Further, it appeared too convenient that Dato' Ly (D5) simply chose not to contest the claims by Datuk Chandrakumanan (D4) upon being served with the writ notwithstanding the allegation that he had failed to give effect to the resolutions of the AMT and the AGM. Even more telling was the fact that Dato' Ly (D5) had contacted Datuk Chandrakumanan (D4) after being served with the writ and statement of claim to inform him that the statement of claim ought to be amended and thereafter, he was directed to liaise directly with Datuk Chandrakumanan (D4)'s solicitors. It was highly unusual for a defendant in an action to advise the plaintiff to improve his statement of claim. Therefore, an order obtained by abuse of the process of the court or by playing fraud or collusion should not be countenanced and such an order should not be allowed to remain operative for a moment. In the circumstances, the consent judgment which was nothing short of a fraud on the court and which was unlawfully procured ought to be set aside (see paras 112–114 & 123).

(4) No steps were taken by Dato' Ly (D5) to give notice of the consent judgment to Datuk Seri Maglin (P1) and Datuk Mohan (P6) and to instruct them to comply with the terms of the same by transferring their shares in Bintang Iradat (D3) to Shanker Kandaswamy (D7) and Kumara Raja (D8) respectively and to resign as the directors of Bintang Iradat (D3). Instead, Dato' Ly (D5) had simply relied on the consent judgment as the instrument authorising him to sign the share transfer forms on behalf of Datuk Seri Maglin (P1) and Datuk Mohan (P6). The transfer forms were accepted by Vijayan (P6) as the newly appointed company secretary of Bintang Iradat (D3) who then lodged the same with the Companies Commissions of Malaysia after Shanker Kandasamy (D7) and Kumara Raja (D8) had executed the same as transferees. Similarly, the consent judgment was relied upon as the instrument authorising the newly appointed company secretary, Vijayan (D6) to remove Datuk Seri

Maglin (P1) and Datuk Mohan (P6) as directors of Bintang Iradat (D3) without holding any shareholders' meeting of the company. This was nothing short of a blatant abuse of the court process through the use of the consent judgment (see paras 118–121).

(5) The consent judgment was procured for the purpose of securing control and possession of the property, Wisma myPPP, into the hands of Tan Sri Kayveas (D1). Whilst there was nothing unlawful about the resolution to remove Datuk Seri Maglin (P1) and Datuk Mohan (P6) as directors and shareholders of Bintang Iradat (D3), the intention to deprive the party of its possession, control and beneficial ownership of the shares of Bintang Iradat (D3) and the property, Wisma myPPP and placing the same in the hands of Tan Sri Kayveas (D1) was unlawful. The means to achieve this objective was by filing the Suit 796 and securing by unlawful means the consent judgment to legimise the taking of the shares of Bintang Iradat and the property, Wisma myPPP from the party into the hands of Tan Sri Kayveas. Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) and Dato' Ly (D5) had proceeded with their plan to deprive the party of the shares of Bintang Iradat and the property, Wisma myPPP notwithstanding that they were fully aware that the true beneficial owner of the said shares and property belonged to the party (see paras 124–125 & 134).

(6) Whilst it is true that all conspirators need not join at the same time and that each conspirator need not personally take part in every act done in the conspiracy, it was nevertheless vital that to be a co-conspirator, he must be fully aware of the circumstances under which his action was but a part, albeit an important part and that he shared the same object of injuring the plaintiff. It would not suffice if the person had merely acted based on instructions given by the main conspirators without appreciating the overall object that had as its underlying intention, causing harm or injury to the plaintiff. It was necessary to demonstrate that the action by the person was in fact done in execution of the agreement. In the present case, the plaintiffs had not been able to show on the balance of probabilities that Vijayan (D6), Shanker Kandasamy (D7), Kumara Raja (D8) and Datuk Lau (D9) were parties to the conspiracy by Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) and Dato' Ly (D5) to deprive the party from the shares of Bintang Iradat (D3) and the property, Wisma myPPP vide the filing of the Suit 796 and the consent judgment. There was nothing to suggest that they were aware that Suit 796 was contrived, and the consent judgment was unlawful. All that they had done was to take steps to comply with the terms of the consent judgment and to follow the instructions given to them for that purpose. The element of common intention had not been adequately proven (see paras 155–157).

(7) The use of legal proceedings to perpetrate fraud on any party must be viewed seriously. There was never any real cause of action against Dato' Ly (D5) in Suit 796. The entire action was staged, filed surreptitiously with no notice given to parties that were affected by the legal proceedings. Both the lack of capacity of the parties to Suit 796 was not disclosed to the court and the sole purpose of the consent judgment was to take advantage of the imprimatur of the court to unlawfully obtain the ownership of property belonging to myPPP. The conspirators' conduct displayed a wanton and contumacious disregard for the sanctity of the legal process. The use of consent orders obtained in fraud of the court was inimical to the due administration of justice and justify an order for exemplary damages (see paras 173–174).

[Bahasa Malaysia summary

Ini merupakan satu tindakan yang difailkan oleh bekas ahli myPPP ('myPPP' atau 'parti'), satu parti politik yang ditubuhkan di bawah Akta Pertubuhan 1966 ('Akta tersebut') terhadap defendan untuk tort salah guna proses mahkamah dan konspirasi untuk mencederakan dengan cara salah yang direka untuk menyebabkan kerugian, kecederaan, kesakitan dan kerosakkan kepada ahli. Tindakan ini difailkan oleh plaintif sebagai wakil untuk dan bagi pihak bekas ahli myPPP. Bintang Iradat (M) Sdn Bhd ('Bintang Iradat') merupakan satu syarikat yang ditubuhkan pada tahun 2000 yang dibentuk sebagai entiti koporat dan pelaburan yang bertindak untuk dan bagi pihak myPPP. Dari 1998, myPPP berpusat di satu bangunan yang dikenali sebagai ('Wisma myPPP'). Satu masa dalam tahun 2003, apabila Wisma myPPP dilelongkan, myPPP melalui Bintang Iradat, telah membayar 10% deposit untuk pembelian Wisma myPPP. Untuk membiayai baki harga belian, Bintang Iradat cuba mendapatkan 'friendly loan' daripada Chong Chek Ah ('Chong'). Sebagai cagaran untuk friendly loan ini, saham dalam Bintang Iradat telah dipindahkan atas amanah kepada Chong. Dalam pecah amanah, Chong telah secara salah menaikan modal saham Bintang Iradat dan menyebabkan saham dalam Bintang Iradat dipindahkan kepada beberapa orang calonnya. Dalam tahun 2010, myPPP telah memulakan guaman sivil terhadap pemegang saham Bintang Iradat, dan selaraskan dengan keputusan Mahkamah Persekutuan dalam Rayuan Sivil No 01–10 Tahun 2012(W), Mahkamah Persekutuan memutuskan bahawa Chong dan calonnya memegang saham secara amanah konstruktif untuk dan bagi pihak myPPP. Oleh itu, ianya merupakan kes plaintif bahawa walaupun hak milik disisi undang-undang Wisma myPPP terletak dalam Bintang Iradat, dan pada semua masa Bintang Iradat memegang Wisma myPPP secara amanah untuk parti dan saham dalam Bintang Iradat dipegang atas amanah untuk myPPP. Dalam tahun 2018, wujud pertelingkahan berkaitan dengan anggota jawatankuasa myPPP yang mana wujud keraguan dan membatalkan pendaftaran parti kerana wujud dua kem di dalam parti yang menyatakan mereka merupakan anggota jawatankuasa yang sah. Kedua-dua kem tidak dapat menyelesaikan perbezaan antara mereka

walaupun diarah untuk berbuat sedemikian oleh ROS. Pada masa pendaftaran dibatalkan, pengarah dan pemegang saham Bintang Iradat merupakan Datuk Seri Maglin (P1) yang memegang 70,000 saham, Datuk Mohan (P6) yang memegang 15,000 saham dan Datuk Lau Beng Wei (D9) yang memegang 15,000 saham. Dalam hari-hari sebelum Pilihanraya Umum ke-14 pada tahun 2018 'GE14'), ianya dikatakan bahawa Tan Sri Kayveas (D1) yang merupakan presiden parti pada masa yang material telah secara sendiri meninggalkan usaha untuk mendapatkan kerusi parlimen dan negeri untuk parti. Sebagai kesan tindakan Tan Sri Kayveas (D1), Majlis Agung myPPP menerima dua surat aduan mengatakan bahawa tindakan Tan Sri Kayveas (D1) secara sendiri meninggalkan kerusi bertentangan dengan perlembagaan parti (perlembagaan). Oleh itu, Tan Sri Kayveas (D1) dibuang sebagai presiden myPPP dan semua kedudukan lain yang dipegang olehnya dalam parti termasuklah keahliannya. Jawatankuasa Disiplin turut memaklumkan Tan Sri Kayveas (D1) bahawa dia tidak dibenarkan untuk memindahkan atau melupuskan mana-mana aset milik parti. Tan Sri Kayveas (D1) kemudiannya meletakkan jawatan daripada myPPP, namun dia kemudiannya menyatakan bahawa dia menarik balik perletakkan jawatannya. Pada peringkat ini, ianya merupakan fakta terbuka bahawa wujud dua kem iaitu kem Tan Sri Kayveas (D1) dan kem Datuk Seri Maglin (P1). Dua kem telah mengadakan AGM mereka sendiri. Kem Tan Sri Kayveas kononnya mengadakan mesyuarat Majlis Tertinggi (AMT) pada 25 Mei 2018 dan kemudiannya terus mengadakan Mesyuarat Agung Tahunan (AGM) pada 27 Mei 2018. Kem Datuk Seri Maglin (P1) pula mengadakan AGM pada 26 Mei 2018. ROS telah menolak minit AGM kedua-dua kem berdasarkan fakta bahawa wujud perebutan kuasa kepimpinan didalam myPPP. Sementara perebutan kuasa berlaku, tanpa pengetahuan plaintif, satu guaman sivil telah difailkan di Mahkamah Tinggi (Guaman 796). Guaman 796 dikatakan difailkan oleh Datuk Chandrakumaran (D4) terhadap Dato' Ly (D5) yang merupakan sebahagian daripada kem Datuk Kayveas (D1). Tiada seorang plaintif diberi notis mengenai Guaman 796 ataupun pemfailannya. Mereka tidak dinamakan sebagai defendan, ataupun mereka diberikan serahan. Guaman 796 kemudiannya dipindahkan ke Mahkamah Komersial dan kes nombor baharu telah diberikan iaitu (Guaman 551). Atas sebab Guaman 796 (di nombor semula kepada Guaman 551) merupakan satu prosiding curi-curi, pendaftaran myPPP telah dibatalkan. Satu penghakiman persetujuan telah direkodkan dalam Guaman 796. Penghakiman persetujuan tersebut telah digunakan secara sistematik untuk mengeluarkan semua saham dalam Bintang Iradat (D3) dan untuk mengarahkannya diletakkan di Kayveas Holdings Sdn Bhd (D2), yang dilakukan melalui enam langkah: (a) pertukaran setiausaha syarikat; (b) pengeluaran pengarahnya; (c) pemindahan saham; (d) penukaran alamat perniagaan; (e) pembatalan memorandum dan artikel pertubuhan; dan (f) pemindahan semua saham kepada Kayveas Holdings. Plaintif kemudiannya meneruskan tindakan ini dan memohon untuk perintah injunksi, pada perbicaraan guaman ini, ianya dimaklumkan bahawa Tan Sri

A B C D E F G H I

Kayveas (D1) masih cuba untuk berurusan dengan Wisma myPPP. Kemudiannya, defendan memfailkan permohonan untuk membatalkan tindakan plaintif disini atas alasan bahawa plaintif tiada locus standi untuk memulakan tindakan ini. Menurut defendan, plaintif tiada kepentingan dalam aset myPPP. Mahkamah telah menolak permohonan pembatalan dan mahkamah rayuan telah menolak rayuan defendan dan disahkan oleh keputusan mahkamah ini menolak permohonan pembatalan defendan. Lanjutan itu, walaupun permohonan pembatalan defendan telahpun di hujah, tanpa pengetahuan plaintif, beberapa prosiding telah difailkan dalam beberapa bahagian negara melibatkan myPPP dan/atau berkaitan dengan status pembatalan pendaftarannya. Prosiding ini semuanya telah dimulakan oleh individu yang memihak dengan kes Tan Sri Kayveas (D1) atau dengan individu yang berkaitan dengan mereka yang memihak kepadanya. Kesan prosiding ini adalah untuk melengahkan tindakan plaintif ini dan untuk mengecualikan plaintif daripada menjadi ahli Majlis Tertinggi myPPP apabila pembatalan pendaftarannya telah dibatalkan. Salah satu kesan prosiding ini adalah apabila myPPP telah didaftarkan semua, locus standi plaintif untuk meneruskan tindakan ini akan mempunyai kesan negatif. Dalam guaman ini tuntutan yang diplid oleh plaintif adalah bahawa defendan, bertindak secara bersama dan selaras dengan satu konspirasi untuk mencederakan dengan cara salah, dan telah secara salah menyebabkan: (i) saham dalam bintang iradat (D3); dan (ii) Wisma myPPP untuk jatuh kepada kawalan Tan Sri Kayveas (D1).

Diputuskan, membenarkan sebahagian daripada tuntutan plaintif.

(1) Kesan pembatalan pendaftaran adalah bahawa semua anggota jawatankuasa parti terbatal dan tidak akan mempunyai apa-apa autoriti untuk bertidak untuk dan bagi pihak parti. Dalam Guaman 796, Datuk Chandrakumanan (D4) telah memfailkan tindakan dalam kapasitinya sebagai naib presiden parti dan Dato' Ly disaman atas kapasitinya sebagai Ketua Setiausaha parti. Kedua-dua parti telah hilang kapasiti dan autoriti untuk bertindakan atas kapasitinya selepas pendaftaran parti dibatalkan. Namun, mereka tidak memaklumkan fakta bahawa parti telah dibatalkan kepada hakim apabila penghakiman persetujuan direkodkan. Lanjutan itu, kedudukan Datuk Chandrakumanan (D4) telahpun ditamatkan oleh keputusan sebulat suara Majlis Tertinggi parti. Majlis Tertinggi Parti telah pun sebulat suara menamatkan keahlian parti Datuk Chandrakumanan (D4). Oleh itu, Datuk Chandrakumanan (D4) tidak mempunyai locus standi untuk memulakan Guaman 796 bagi pihak parti. Fakta ini tidak dimaklumkan kepada mahkamah langsung. Oleh itu, penghakiman persetujuan tersebut diterima tanpa memaklumkannya kepada mahkamah oleh itu, ianya sepatutnya diketepikan (lihat perenggan 101–104).

(2) Walaupun didalam AGM, Datuk Chandrakumanan (D4) dikatakan dilantik sebagai naib presiden parti, AGM tersebut tidak pernah

diiktriraf oleh ROS. Kesahan AGM tersebut dibantah oleh kem Datuk Maglin (P1). Dalam apa keadaan, cubaan Datuk Chandrakumanan (D4) untuk mendapatkan keahliannya sebagai naib presiden parti diiktiraf dan disahkan dalam guaman JR KL ditolak dan tiada rayuan difailkan atas penolakan tersebut. Keseluruhan Guaman 796 tidak lebih daripada guaman yang difailkan di mahkamah tinggi untuk mengambil kesempatan keatas proses mahkamah untuk mengambil kawalan Wisma myPPP dan untuk meletakkan harta dalam milikan tunggal Tan Sri Kayveas (P1). Niat adalah jelas untuk menggunakan kuasa Mahkamah Tinggi sebagai cara untuk memindahkan saham dalam Bintang Iradat (D3) yang didaftarkan atas nama Datuk Seri Maglin (P1) dan Datuk Mohan (P6) dan untuk menukar pengarah syarikat kepada individu yang memihak kepada Tan Sri Kayveas (P1) (lihat perenggan 106–107).

(3) Walaupun permohonan dalam Guaman 796 memberi kesan kepada Datuk Seri Maglin (P1) dan Datuk Mohan (P6) sebagai pemegang saham berdaftar dan pengarah Bintang Iradat (D3), mereka tidak dinamakan sebagai pihak kepada gumana 796. Lanjutan itu, ianya terlalu mudah bahawa Dato' Ly (D5) hanya memilih untuk tidak mencabar tuntutan oleh Datuk Chandrakumanan (D4) setelah diserahkan dengan writ tanpa mengambil kira penyataan bahawa dia gagal untuk memberi kesan kepada resolusi AMT dan AGM. Apa yang lebih menyerlah adalah fakta bahawa Dato' Ly (D5) telah menghubungi Datuk Chandrakumanan (D4) setelah diserahkan writ dan penyataan tuntutan dan memaklumkan kepadanya bahawa penyataan tuntutan sepatutnya dipinda dan kemudian dari itu dia diarahkan untuk berhubung secara terus dengan peguam Datuk Chandrakumanan. Adalah luar biasa untuk defendan dalam satu tindakan untuk memberi nasihat kepada plaintif untuk memperbaiki penyataan tuntutannya. Oleh yang demikian, satu perintah yang diperoleh melalui salah guna proses mahkamah atau dengan bersubahat atau tindakan frod tidak boleh dibenarkan dan perintah sedemikian tidak boleh dibiarkan berkuat kuasa. Dalam keadaan ini, penghakiman persetujuan merupakan satu frod terhadap mahkamah yang telah diperoleh secara salah dan seharusnya diketepikan. (lihat perenggan 112–114 & 123).

(4) Tiada langkah-langkah diambil oleh Dato' Ly (D5) untuk memberi notis penghakiman persetujuan kepada Datuk Seri Maglin (P1) dan Datuk Mohan (P6) dan untuk mengarahkan mereka untuk mematuhi termanya dengan memindahkan saham mereka dalam Bintang Iradat (D3) kepada Shanker Kandaswamu (D7) dan Kumara Raja (D8) dan untuk meletakkan jawatan mereka sebagai pengarah Bintang Iradat (D3). Sebaliknya, Dato' Ly (D5) hanya bergantung kepada penghakiman persetujuan sebagai instrumen yang memberi kuasa kepadanya untuk menandatangani borang pemindahan saham bagi pihak Datuk Seri Maglin (P1) dan Datuk Mohan (P6). Borang pemindahan diterima oleh

Vijayan (P6) sebagai setiausaha syarikat baru Bintang Iradat (D3) yang kemudiannya mendaftarkannya dengan Suruhanjaya Syarikat Malaysia selepas Shanker Kandasamy (D7) dan Kumara Raja (D8) telah melaksanakannya sebagai penerima pindahan. Sama seperti terdahulu, penghakiman persetujuan yang diberikan kebergantungan sebagai instrumen yang memberi kuasa kepada setiausaha syarikat yang baru dilantik, Vijayan (D6) untuk mengeluarkan Datuk Seri Maglin (P1) dan Datuk Mohan (p6) sebagai pengarah Bintang Iradat (D3) tanpa apa-apa mesyuarat pemegang saham syarikat. Ini merupakan penyalahgunaan proses mahkamah yang jelas melalui penggunaan penghakiman persetujuan (lihat perenggan 118–121).

(5) Penghakiman persetujuan yang diperoleh untuk tujuan mendapatkan kawalan dan milikan hartanah, Wisma myPPP, ke tangan Tan Sri Kayveas (D1). Walaupun tiada apa-apa yang salah disisi undang-undang dengan resolusi untuk mengeluarkan Datuk Seri Maglin (P1) dan Datuk Mohan (P6) sebagai pengarah dan pemegangan saham Bintang Iradat (D3), niat untuk menghalang pihak daripada milikan kawalan, dan pemilihan benefisial saham Bintang Iradat (D3) dan hartanah, Wisma myPPP dan meletakkannya kedala tangan Tan Sri Kayveas (D1) adlaah tidak sah. Cara untuk mendapatkan objektif ini adalah melalui pemfailan Guaman 796 dan mendapatkan melalui cara salah penghakiman persetujuan untuk mengesahkan pengambilan saham Bintang Iradat dan hartanah, Wisma myPPP dari parti ke tangan Tan Sri Kayveas. Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) dan Dato' Ly (D5) telah diteruskan dengan rancangan mereka untuk menghalang parti daripada saham Bintang Iradat dan hartanah, Wisma myhPPP tanpa mengambil kira fakta bahawa mereka mengetahui bahawa pemilik benefisial sebenar saham dan hartanah tersebut berada pada parti (lihat perenggan 124–125 & 134).

(6) Walaupun ianya benar bahawa semua yang berada didalam konspirasi tidak perlu bersama pada waktu yang sama, dan bahawa setiap individu dalam konspirasi tidak perlu mengambil bahagian dalam semua perlakuan dalam konspirasi, ianya adalah penting bahawa untuk menjadi seorang yang berkonspirasi, dia perlu sedar akan keadaan yang mana tindakannya adalah sebahagian, walaupun bahagian yang penting dan bahawa dia mempunyai objektif yang sama untuk mencederakan plaintif. Ianya tidak memadai sekiranya individu tersebut hanya bertindak atas arahan yang diberikan oleh individu utama yang terlibat dalam konspirasi tanpa mengamati keseluruhan matlamat dan niat utamanya, untuk menyebabkan kesakitan atau kecederaan kepada plaintif. Ianya adalah perlu untuk menunjukkan bahawa tindakan individu tersebut dilakukan dalam pelaksanaan persetujuan. Dalam kes ini, plaintif tidak dapat untuk menunjukkan atas imbangan kebarangkalian bahawa Vijayan (D6), Shanker Kandasamy (D7),

Kumara Raja (D8) dan Datuk Lau (D9) merupakan pihak dalam konspirasi oleh Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) dan Dato' Ly (D5) untuk menghalang plaintif daripada saham Bintang Iradat (D3) dan hartanah, Wisma myPPP, melalui pemfailan Guaman 796 dan penghakiman persetujuan. Tiada apa-apa untuk mencadangkan bahawa mereka mengetahui bahawa Guaman 796 dilakukan dibuat-buat, dan penghakiman persetujuan adalah tidak sah. Apa yang dilakukan hanyalah untuk mengambil langkah untuk mematuhi dengan terma penghakiman persetujuan dan mematuhi arahan yang diberikan kepada mereka untuk tujuan tersebut. Elemen niat bersama tidak dibuktikan secara memadai (lihat perenggan 155–157).

(7) Penggunaan prosiding undang-undang adalah untuk meneruskan frod pada apa-apa pihak haruslah dipandang secara serius. Tiada apa-apa kausa tindakan yang benar terhadap Dato' Ly (D5) dalam Guaman 796. Keseluruhan tindakan telah diada-adakan, difailkan secara rahsia dan tiada notis diberikan kepada pihak yang terkesan oleh prosiding undang-undang. Ketiadaan kapasiti pihak Guaman 796 tidak dimaklumkan kepada mahkamah dan tujuan tunggal penghakiman persetujuan adalah untuk mengambil kesempatan terhadap imprimatur mahkamah untuk secara salah mendapat milikan hartanah yang dimiliki oleh myPPP. Pelakuan individu yang mengambil bahagian dalam konspirasi menunjukkan ketidakendahan jelas terhadap kesucian prosiding proses perundangan. Pengunaan penghakiman persetujuan yang diperoleh melalui fraud terhadap mahkamah adalah memudaratkan kepada pentadbiran keadilan dan memberi justifikasi untuk perintah ganti rugi teladan (lihat perenggan 173–174).]

Cases referred to

Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd [1999] 4 MLJ 637, CA (refd)

Kuwait Oil Tanker Co SAK and another v Al Bader and others [2000] 2 All ER (Comm) 271, CA (refd)

Kwan Ngen Wah & Ors v Hiew Kon Fah & Ors and other appeals [2019] MLJU 226, CA (refd)

Lam Hooi Co Sdn Bhd v Tanjung Pasir Puteh Realty Sdn Bhd & Ors [2019] MLJU 333, HC (refd)

Manzer Medical Sdn Bhd & Ors v Bongsor Bina Sdn Bhd [2018] 6 MLJ 574, CA (refd)

RG Shinde v State of Maharashtra (1994) 1 MLJ 42, SC (folld)

Renault SA v Inokom Corp Sdn Bhd & Anor and other appeals [2010] 5 MLJ 394, CA (refd)

Rookes v Barnard [1964] AC 1129, HL (refd)

Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal [2018] 1 MLJ 784, CA (folld)

A *Sibu Slipway Sdn Bhd v Yii Chee Ming & Ors and other appeals* [2017] 1 MLJ 368, CA (refd)
Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd [2015] 5 MLJ 1, FC (refd)
Tradewinds Properties Sdn Bhd v Zulhkiple bin A Bakar & Ors [2019] 1 MLJ 421, CA (folld)

B

Legislation referred to

Companies Act 2016 s 517
Insolvency Act 1967 s 86
Societies Act 1966 ss 17, 18, 18C

C

K Thavanesan (Gavin Jayapal and Tanusha Nesaratnam with him) (Gavin Jayapal) for the plaintiffs.
Ashraf Appoo (Nurul Azua bt Abu Yazid with him) (Gunaseharan & Linda) for the first to eighth defendants.
D *Carolyn Cheah (CH Cheah Chambers) for the ninth defendant.*
Pricilla Ulau Deng (Malaysian Department of Insolvency, Wilayah Persekutuan Kuala Lumpur) for the tenth defendant.

Ong Chee Kwan JC:

E

INTRODUCTION

[1] This is an action filed by former members of myPPP ('myPPP' or 'the party'), a political party established under the Societies Act 1966 (Act 335)
F ('the Act') against the defendants for the tort of abuse of court process and conspiracy to injure by unlawful means designed to cause loss, harm and damage to the members. The action is taken by the plaintiffs in a representative capacity for and on behalf of the former members of myPPP.

G **[2]** Amongst the reliefs sought by the plaintiffs include:

(a) a declaration and an order that the consent judgment dated 16 January 2019 recorded in Civil Suit No WA-22NCVC-796–11 of 2018 be set aside;

H (b) a declaration that shares of Bintang Iradat (M) Sdn Bhd (Company No 510546-X) are the property of myPPP and shall vest in the Director General of Insolvency following the de-registration of myPPP on 14 January 2019;

I (c) a declaration that all the building known as Wisma myPPP is the property of myPPP and is vested in the Director General of Insolvency following the de-registration of myPPP on 14 January 2019; and

(d) an order for damages following from the unlawful conspiracy and the tort of abuse of process.

[3] The plaintiffs have named the Director General of Insolvency as a party to the action. The Director General of Insolvency did not take an active role at the trial.

BACKGROUND FACTS

[4] MyPPP was a political party registered under the Act and was a component of the Barisan Nasional. Bintang Iradat (M) Sdn Bhd ('Bintang Iradat') was a company incorporated in 2000 and was formed as the investment and corporate entity that acted for and on behalf of myPPP.

[5] From 1998, myPPP was headquartered at a building known as Wisma myPPP located at No 74 Jalan Rotan, Off Jalan Kampung Attap, 50460 Kuala Lumpur ('Wisma myPPP'). Sometime in 2003, when Wisma myPPP was put up for auction, myPPP utilising Bintang Iradat, paid 10% deposit for the purchase of Wisma myPPP.

[6] To finance the balance purchase price, Bintang Iradat sought a friendly loan from one Chong Chek Ah ('Chong'). As security for this friendly loan, the shares in Bintang Iradat were transferred in trust to Chong. In breach of the trust, Chong had wrongfully increased the share capital of Bintang Iradat and caused the shares in Bintang Iradat to be transferred to various of his nominees.

[7] Sometime in 2010, myPPP initiated a civil suit against the shareholders of Bintang Iradat and pursuant to the Federal Court's decision in Civil Appeal No 02–10 of 2012(W), the Federal Court held that Chong and his nominees held the shares in Bintang Iradat as constructive trustees for and on behalf of myPPP.

[8] Thus, it is the plaintiffs' case that whilst the legal ownership of Wisma myPPP was vested in Bintang Iradat, at all times Bintang Iradat held Wisma myPPP on trust for the party and the shares in Bintang Iradat were held on trust for myPPP. In this regard, the plaintiffs relied on the aforesaid Federal Court's decision in the Civil Appeal No 02–10 of 2012(W).

[9] Sometime in 2018, there was a dispute with regard to the office bearers of myPPP. Via a letter dated 10 July 2018, the Registrar of Societies ('ROS') confirmed that the validity of the office-bearers of myPPP was in doubt. Via a letter dated 13 September 2018, ROS again confirmed that there was a dispute pertaining to office-bearers.

[10] This dispute culminated in the de-registration of myPPP on 14 January 2019. The ROS had cancelled the registration of the party on 14 January 2019 because there were two different camps within the party holding themselves

A out as the rightful office-bearers and both the two camps were unable to resolve their differences despite being directed to do so by the ROS.

B **[11]** At the time of the de-registration, the directors and shareholders of Bintang Iradat were Datuk Seri Maglin (the first plaintiff or P1) who held 70,000 shares, Datuk Mohan (the sixth plaintiff or P6) who held 15,000 shares and Datuk Lau Beng Wei (the ninth defendant or D9) who held 15,000 shares.

C **[12]** It is necessary to briefly set out the events leading to the disputes in the party.

D **[13]** In the lead-up to the 14th General Election in 2018 ('GE14'), it was alleged that the first defendant, Tan Sri Kayveas (D1) who was the President of the party at the material times had unilaterally gave up the pursuits of Parliamentary and State seats for the party.

E **[14]** myPPP had via a letter dated 15 February 2018 asked for several seats. However, this was reduced to two seats via a letter dated 3 April 2018 and finally, on 9 April 2018, Tan Sri Kayveas had unilaterally requested for only one seat which he alone sought to contest, namely the Cameron Highlands constituency.

F **[15]** As a consequence of Tan Sri Kayveas' aforesaid actions, myPPP's Supreme Council received two letters of complaint by one Datuk Chiw Tiang Chai and one Datuk Inder Singh a/l Beant Singh alleging that Tan Sri Kayveas's conduct in unilaterally abandoning the seats was contrary to article 9.9.1.6 of the party's Constitution ('the Constitution').

G **[16]** Datuk Mohan (D6), in his capacity as Secretary-General of myPPP, also received a letter of complaint dated 24 April 2018 from Barisan National urging myPPP to take necessary disciplinary actions.

H **[17]** Consequently, a Disciplinary Committee was convened on 24 April 2018 and it was determined that Tan Sri Kayveas (P1) would be expelled with immediate effect as President of myPPP and all other positions held in the party including his membership.

I **[18]** Via a letter dated 25 April 2018, the Disciplinary Committee informed Tan Sri Kayveas (P1) of his termination as a member and his expulsion as President of myPPP. In the said letter, Tan Sri Kayveas (P1) was informed that he was not allowed to transfer or dispose all or any assets belonging to the party.

[19] Tan Sri Kayveas (P1) then resigned from myPPP.

[20] GE14 took place on 9 May 2018. myPPP did not secure any seats.

THE DUAL-AGMS

[21] Tan Sri Kayveas (P1) subsequently claimed that he withdrew his resignation.

[22] At this point, it was an open fact that there existed two camps, namely Tan Sri Kayveas' camp and Datuk Seri Maglin's camp.

[23] The two camps held their respective AGMs. In this regard:

(a) Tan Sri M Kayveas's camp purportedly held a Supreme Council ('AMT') meeting on 25 May 2018 ('25 May 2018 AMT'). Of significance for our present purpose is that the Supreme Council had proposed for the following resolution to be tabled at the party's 65th AGM to be convened on 27 May 2018;

> II. Memindah hakmilik bangunan myPPP kepada pemilik asal (beneficial owner) seperti berikut:
>
> (a) Datuk Mohan Kandasamy be replaced as Director by Kumara Raja a/l Arumugam (Nric No: 610410-71-6059), Datuk Seri Maglin Dennis D'Cruz replace by Shanker Kandasamy (Nric No: 660114-10-6545) to remain as Director; and
>
> (b) The shareholding be as follow:
>
> | | |
> |---|---|
> | Kumara Raja a/l R Arumugam | 15% |
> | Shanker Kandasamy | 70% |
> | Datuk Lau Beng Wei | 15% |

(b) Tan Sri M Kayveas's camp then proceeded to hold an Annual General Meeting on 27 May 2018 ('27 May 2018 AGM');

(c) at this 27 May 2018 AGM, one Joseph a/l Sinnaveeriah had tabled the following motion which was proposed by one Selvi a/p Raman and supported by one Mohanan a/l K Rajoo and which was unanimously carried:

> In accordance to Article 24.2 and Article 24.4 myPPP Constitution, the names of ceased members as per Article 30.3 namely Datuk Mohan Kandasamy and Datuk Seri Maglin Dennis D'Cruz be dismissed and removed from the company Bintang Iradat (M) Sdn Bhd as per Supreme Council decision taken on the 25 May 2018 Bil. 05/2018 as Directors and Shareholders holding on trust for the party on behalf of the beneficial owner Tan Sri Datuk Seri M Kayveas and transferred accordingly back to him to avoid future legal tussle by members who do not understand the meaning of holding trust.

(d) Datuk Seri Maglin's camp in turn organised an AGM on 26 May 2018 ('26 May 2018 AGM') but nothing in this case turns on this AGM.

ROS REJECTS THE AGM MINUTES OF BOTH CAMPS

[24] The ROS rejected the AGM Minutes of both camps. This was premised upon the fact that there was a leadership tussle within myPPP.

[25] The ROS issued a letter dated 13 September 2018 ('letter dated 13 September 2018') to the party stating, inter alia, that the party had failed to resolve its disputes relating to the expulsion and the resignation of Tan Sri Kayveas (P1) and its duly elected Supreme Council pursuant to the party's 63th Annual General Meeting for the 2014–2019 session and had failed to resolve the issues relating to the legitimate office bearers of the party.

[26] By the letter dated 13 September 2018, the ROS directed that the matter be resolved failing which, myPPP would have its registration cancelled.

[27] Datuk Mohan (P6), in his capacity as Secretary-General, circulated the letter dated 13 September 2018 to all Supreme Council members. A meeting was held on 30 September 2018, to determine:

(a) whether the resignation issued by Tan Sri M Kayveas (P1) dated 23 April 2018 was valid?

(b) whether the termination of Tan Sri M Kayveas (P1) dated 24 April 2018 was valid? and

(c) whether the actual office-bearers of myPPP was as per a list annexed to his letter?

[28] It is the plaintiffs' case that 23 Supreme Council members had attended the meeting on 30 September 2018 and had unanimously agreed to the motions.

[29] Datuk Mohan (P6), in his capacity as Secretary-General, wrote to the ROS on 5 October 2018 to inform it of the outcome.

[30] Notwithstanding the aforesaid, further letters dated 14 November 2018 and 13 December 2018 were issued by the ROS. The ROS maintained that the leadership dispute within myPPP was still unresolved and further warned that failure to resolve the dispute would result in the party having its registration cancelled.

THE FILING OF CIVIL SUIT NO WA-22NCVC-796–11 OF 2018

[31] Whilst the leadership tussle was being played out, unbeknownst to the plaintiffs, a civil suit was filed in the Kuala Lumpur High Court on 29 November 2018. This was Civil Suit No WA-22NCVC-796–11 of 2018 ('the Suit 796').

[32] The Suit 796 was purportedly filed as between:

(a) Datuk Chandrakumanan (D4), purportedly acting in his capacity as the Vice President of myPPP; and

(b) Dato' Ly (D5), purportedly acting in his capacity as the Secretary-General of myPPP.

[33] Both Datuk Chandrakumaran (D4) and Dato' Ly (D5) were part of Tan Sri Kayveas's camp and had attended the 25 May 2018 AMT.

[34] Based on the statement of claim filed in Suit 796, Datuk Chandrakumanan (D4) alleged that at the 25 May 2018 AMT, a motion had been passed which sought to remove Datuk Mohan (P6) and Datuk Seri Maglin (P1) as directors and shareholders in Bintang Iradat (D3). They were to be replaced by Kumara Raja (D8) and Shanker (D7) respectively.

[35] It was further alleged that the 27 May 2018 AGM had purportedly endorsed the said motion.

[36] The statement of claim further alleged, at para 12, that Dato' Ly (D5) had 'failed' to take the necessary actions to replace the directors and shareholders of Bintang Iradat (D3).

[37] Premised thereto, Datuk Chandrakumanan (D4) sought the following prayers as against Dato' Ly (D5):

13. Oleh yang demikian Plaintif memohon untuk perintah-perintah berikut:-

i) Bahawa Defendan mengambil langkah-langkah untuk memindahmilik saham-saham Bintang Iradat (M) Sdn Bhd seperti berikut:-

Daripada	Kepada	Jumlah Saham
Maglin A/L Dennis De'Cruz (No. K/P: 560227-10-5057)	Shanker Kandaswamy (No. K/P: 781015-14-5339)	70,000
Mohan A/L A. Kandasamy (No.K/P: 600222-05-5007)	Kumara Rajah A/L Arumugam (No. K/P: 610410-71-6059)	15,000

ii) bahawa Defendan diberikuasa untuk membuat resolusi-resolusi syarikat yang sewajarnya untuk memindah milik saham-saham syarikat serta menggantikan lembaga pengarah sewajarnya.

iii) bahawa Defendan mengambil langkah-langkah untuk menggantikan pengarah-pengarah syarikat Bintang Iradat (M) Sdn Bhd seperti berikut:-

Pengarah Lama	Pengarah Baru
Mohan A/L A. Kandasamy (No.K/P: 600222-05-5007)	Kumara Rajah A/L R. Arumugam (No. K/P: 610410-71-6059)
Maglin A/L Dennis D'Cruz (No. K/P: 560227-10-5057)	Shanker A/L Kandaswamy (No. K/P: 781015-14-5339)

iii) Sekiranya Defendan gagal, enggan atau cuai menandatangani sebarang borang pindahmilik atau resolusi syarikat, maka Pendaftar Mahkamah Tinggi dan/atau Plaintif diberikuasa untuk menandatangani borang-borang tersebut.

iv) Apa-apa perintah lain yang Mahkamah Mulia ini fikirkan adil dan wajar.

Bertarikh pada 26 November, 2018.

.....
Tetuan Jafar & Menon
Peguambela bagi Plaintif

[38] None of the plaintiffs had notice of the Suit 796, or of its filing. They were not named as defendants, nor were they served. This was so despite the orders being sought had specifically named Datuk Mohan (P6), Datuk Seri Maglin (P1) and Bintang Iradat (D3).

[39] The plaintiffs alleged that at the time the Suit 796 was filed, Datuk

Chandrakumanan's (P1) membership in the party had already been terminated. In this regard: A

(a) Datuk Chandrakumanan (D4) had all positions in myPPP stripped in April 2015; and

(b) Datuk Chandrakumanan (D4) was then terminated as a member of myPPP in September 2015. B

[40] The decision to strip Datuk Chandrakumanan (D4) of his position in the Supreme Council was unanimously made by the party's Supreme Council on 4 April 2015. On 12 September 2015, the party's Supreme Council also unanimously terminated Datuk Chandrakumanan (D4) as a member of the party. The relevant minutes are not disputed. C

[41] Consistent with Datuk Chandrakumanan's (D4) termination, the ROS did not acknowledge Datuk Chandrakumanan (D4) as a member of myPPP. In all its correspondence, it never once copied him or named him. D

[42] The Suit 796 was subsequently transferred to the Commercial Court and a fresh case number ie WA-22NCC-551–12 of 2018 was issued ('Suit 551'). E

[43] The writ and statement of claim were then amended on 28 December 2018 with the following: F

(a) that purportedly, on 29 June 2013, the Supreme Council had determined that the trustee be transferred to the original buyer and shareholder of Bintang Iradat (D3); and

(b) that Vijayan a/l Singaram (D6) be re-appointed as the Company Secretary of Bintang Iradat (D3) to effect the registration of the transfer documents immediately. G

CANCELLATION OF MYPPP

H

[44] As the Suit 796 (renumbered to Suit 551) was surreptitiously proceeding, myPPP had its registration cancelled on 14 January 2019. This material fact is not in dispute.

[45] In fact, the cancellation of myPPP's registration was a fact known to all the defendants herein including Datuk Chandrakumanan (D4) Dato' Ly (D5) and Tan Sri Kayveas (D1) who at the trial of this action acknowledged that they had full knowledge as to the cancellation on 14 January 2019. I

A THE CONSENT JUDGMENT DATED 16 JANUARY 2019

[46] On 15 January 2019, Mr Lee Jun How (SP-6), the legal assistant from Messrs Jaafar Menon, solicitors for Datuk Chandrakumanan (D4) attended at the Kuala Lumpur High Court for the Suit 796. This was one day *after* myPPP had its registration cancelled. Dato' Ly (D5) was also present.

[47] They went before Justice Darryl Goon (presently JCA) and sought to record a consent judgment. This was rejected by His Lordship. The minutes of the proceedings before His Lordship is reproduced below:

DI HADAPAN YA TUAN DARRYL GOON SIEW CHYE

NOTA PROSIDING

Selasa, 15 Januari 2019

No. Kandungan : 1
Jenis Prosiding : CM-Track
Peguam Plaintif : Lee Jun How
Peguam Defendan : In person

MINIT:

COUNSEL:

P : Lee Jun How

D : In person

10.30 am- 10.45 am

P : Hands draft consent judgment.

Court : Clause (ii) and (v) – court cannot make those orders. Company in question is not a party. At most D can agreed to take steps to have those things done.

P: D has not entered an appearance.

Court: D should enter an appearance either in person or through a solicitor.

Court: To 9 a.m. tomorrow 16.1.2019 for CM of Enc 1.

[48] It is important to note that Justice Darryl Goon had added an important caveat to the proposed consent judgment. His Lordship noted that the court could not make the orders requested as the company (ie, Bintang Iradat) was not a party to the suit. At best, the defendant could only agree to 'take steps to have those things done'.

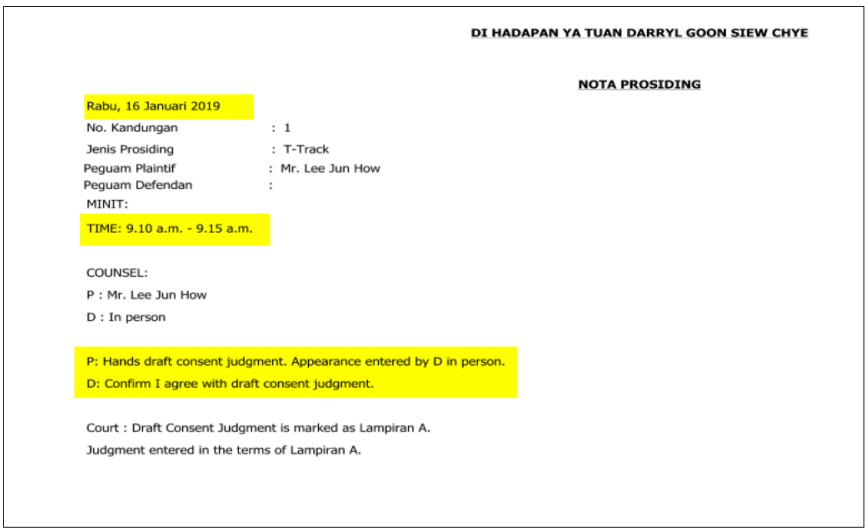
THE MEMORANDUM OF APPEARANCE IS FILED

[49] After the attendance before Justice Darryl Goon aforesaid, on the same day (15 January 2019) at around 2:22pm, Dato' Ly (D5) filed a memorandum of appearance dated 15 January 2019 ('MOA') in the Suit 796.

[50] The next day, on 16 January 2019, both Mr Lee Jun How and Dato' Ly attended before Justice Darryl Goon's court again. They proceeded to record a

consent judgment on that date ('the consent judgment'). A

[51] It is not disputed that His Lordship was not informed of the fact that myPPP had had its registration cancelled on 14 January 2019 by either Mr Lee Jun How nor Dato' Ly either on 15 January 2019 or on 16 January 2019. The minutes of the proceedings on 16 January 2019 certainly did not make any mention of the cancellation of myPPP. B



DI HADAPAN YA TUAN DARRYL GOON SIEW CHYE

NOTA PROSIDING

Rabu, 16 Januari 2019
No. Kandungan : 1
Jenis Prosiding : T-Track
Peguam Plaintif : Mr. Lee Jun How
Peguam Defendan :
MINIT:
TIME: 9.10 a.m. - 9.15 a.m.

COUNSEL:
P : Mr. Lee Jun How
D : In person

P: Hands draft consent judgment. Appearance entered by D in person.
D: Confirm I agree with draft consent judgment.

Court : Draft Consent Judgment is marked as Lampiran A.
Judgment entered in the terms of Lampiran A.

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[52] The consent judgment was, in effect, an order in terms of what was sought via the amended statement of claim.

USE OF CONSENT JUDGMENT G

[53] The consent judgment was relied upon to make several changes to the shareholdings, directorship and company secretary of Bintang Iradat (D3).

[54] Prior to the consent judgment, the shareholdings and directorial structure of Bintang Iradat (D3) were as follows: H

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DIRECTORS/OFFICERS

Company Name :BINTANG IRADAT (M) SDN. BHD.
Company Number :**510546-X**

Name/Address	IC/Passport	Designation	Date of Appointment
MAGLIN A/L DENNIS D'CRUZ, DATUK NO WW 16-08 CONDOMINIUM MENARA REGENSI JALAN PELANGI 41300 KLANG SELANGOR	560227-10-5057	DIRECTOR	29-06-2011
DATUK MOHAN A/L A KANDASAMY NO. 38, JALAN SERI MERSING 30 TAMAN SRI ANDALAS 41000 KLANG SELANGOR	600222-05-5007	DIRECTOR	18-05-2015
LIM WAI YEE 9, JALAN HELANG 5, BANDAR PUCHONG JAYA, 47100 PUCHONG SELANGOR	650227-10-6200	SECRETARY	15-05-2018

SHAREHOLDER/MEMBERS

Company Name :BINTANG IRADAT (M) SDN. BHD.
Company Number :**510546-X**

IC/Passport/Company No	Name/Company Name	Total of share
560227-10-5057	MAGLIN A/L DENNIS D'CRUZ, DATUK	70,000.00
660114-10-6545	LAU BENG WEI, DATUK	15,000.00
600222-05-5007	DATUK MOHAN A/L A KANDASAMY	15,000.00

[55] The consent judgment was utilised to change the structure of Bintang Iradat (D3) to ultimately reflect Kayveas Holdings Sdn Bhd (D2) as the sole shareholder to Bintang Iradat (D3) as follows:

DIRECTORS/OFFICERS

Company Name : BINTANG IRADAT (M) SDN. BHD.
Company Number : **510546-X**

Name/Address	IC/Passport	Designation	Date of Appointment
TAN SRI DATUK SERI M.KAYVEAS NO. 21, JALAN PERMAI OFF JALAN ROBSON MALAYSIA 50460 KUALA LUMPUR WILAYAH PERSEKUTUAN	540429-06-5067	DIRECTOR	19-02-2019
VIJAYAN A/L SINGARAM NO. 161-4, BLOCK 5 JALAN PERKASA SATU TAMAN MALURI, CHERAS 55100 CHERAS WILAYAH PERSEKUTUAN	601205-10-6639	SECRETARY	29-01-2019

SHAREHOLDERS/MEMBERS

Company Name : BINTANG IRADAT (M) SDN. BHD.
Company Number : **510546-X**

IC/Passport/ Company No	Name/Company Name	Total of Share
829080-V	KAYVEAS HOLDINGS SDN. BHD.	100,000

[56] More specifically, the consent judgment was systematically utilised to remove all shares in Bintang Iradat (D3) and to have the same ultimately lodged in Kayveas Holdings Sdn Bhd (D2). The process of change was conducted through six steps.

The first step: Changing of the Company Secretary

[57] The consent judgment was firstly utilised to change the Company Secretary of Bintang Iradat (D3). This was done on 29 January 2019 where the Company Secretary of Bintang Iradat (D3) was changed from Miss Lim Wai Yee to Vijayan a/l Singaram (D6). The reason stated for the change was stated to be 'cease by court order'.

The second step: Removal of directors

[58] With a company secretary replaced, steps were taken to effect the removal of Datuk Mohan (P6) and Datuk Seri Maglin (P1) as directors of Bintang Iradat (D3) on 29 January 2019. Again, the justification for the removal was stated as 'cease by court order'.

[59] On the same date, Shanker Kandasamy (D7) and Kumara Raja (D8) were appointed as Directors of Bintang Iradat (D3).

The third step: Transfer of shares

[60] The third Step involved transferring shares from Datuk Mohan (P6) and Datuk Seri Maglin (P1) to Kumara Raja (D8) and Shanker Kandasamy (D7), respectively. This was done on 30 January 2019.

[61] Dato' Ly (D5) was the individual who executed the share transfer forms purportedly on behalf of Datuk Mohan (P6) and Datuk Seri Maglin (P1).

The fourth step: A change of business address

[62] At this juncture, Datuk Mohan (P6) and Datuk Seri Maglin (P1), unbeknownst to them, had had their directorial posts and shareholdings in Bintang Iradat (D3) unlawfully removed.

[63] The business address of Bintang Iradat (D3) was subsequently changed and on 8 February 2019, the name Wisma myPPP was changed to 'Wisma Tan Sri Kayveas'

[64] This was followed-up on 12 February 2019 with a change to the Nature of Business of Bintang Iradat (D3) to include the '... buying, selling ... or otherwise deal in any real estate/assets in such manner as may deem expedient'.

The fifth step: Abolishment of the memorandum and articles of association

[65] Subsequently, the memorandum and articles of association of Bintang Iradat (D3) were abolished on 12 February 2019.

The sixth and final step: Transfer of all shares to Kayveas Holdings

[66] To complete the transfer, the shares of Bintang Iradat D3) held by Shanker Kandasamy (D7), Kumara Raja (D8) and Datuk Lau Beng Wei (D9) were all transferred to Kayveas Holdings Sdn Bhd (D2) on 12 March 2019.

[67] As a result, the final structure of Bintang Iradat (D3) becomes as follows:

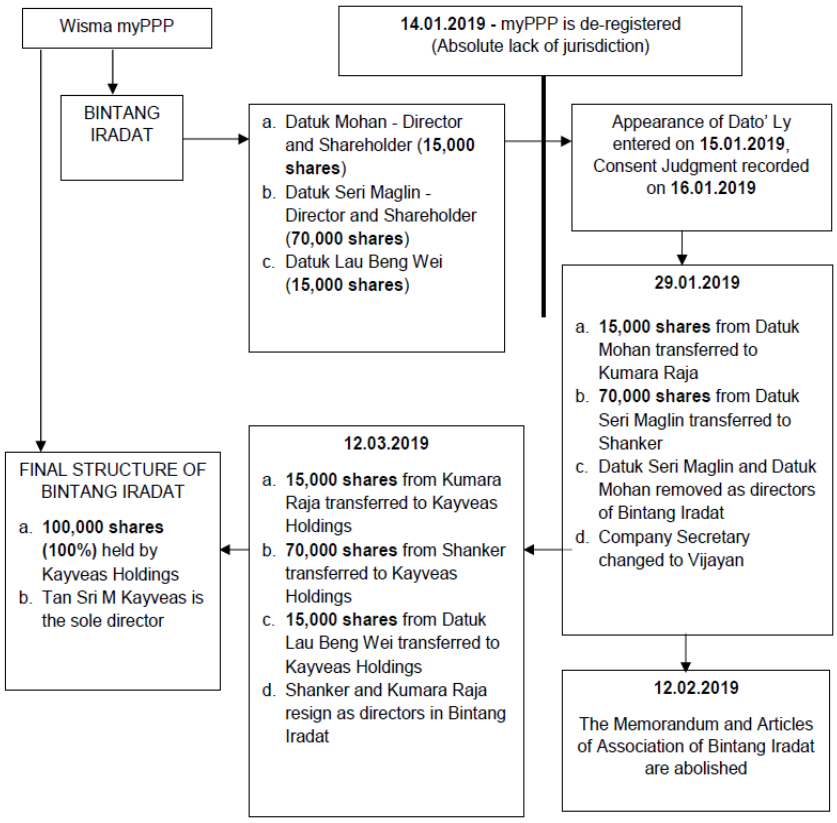
(a) Bintang Iradat (D3) had one sole director, namely Tan Sri Kayveas (D1); and

(b) 100% of Bintang Iradat (D3)'s shares were held by Kayveas Holdings Sdn Bhd (D2).

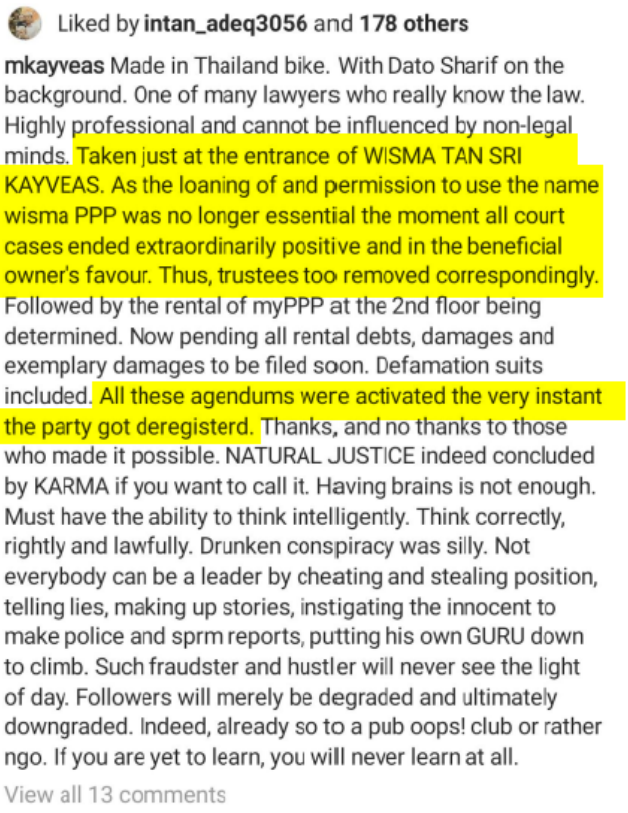
[68] Kayveas Holdings Sdn Bhd (D3) is an entity controlled by Tan Sri Kayveas (D1). He holds 999,999 shares in the said company, which has a capital of RM1m. The only other director and shareholder in Kayveas Holdings Sdn Bhd (D2) is Madam Kaliamah a/p Vadivaloo, who is Tan Sri Kayveas (D1)' mother. She is 86 years old and holds the balance one share.

[69] Vijayan (D6) is also the company secretary of Kayveas Holdings Sdn Bhd.

[70] To depict this in a pictorial form:


Wisma myPPP
14.01.2019 - myPPP is de-registered (Absolute lack of jurisdiction)
BINTANG IRADAT
a. Datuk Mohan - Director and Shareholder (15,000 shares)
b. Datuk Seri Maglin - Director and Shareholder (70,000 shares)
c. Datuk Lau Beng Wei (15,000 shares)
Appearance of Dato' Ly entered on 15.01.2019, Consent Judgment recorded on 16.01.2019
29.01.2019
a. 15,000 shares from Datuk Mohan transferred to Kumara Raja
b. 70,000 shares from Datuk Seri Maglin transferred to Shanker
c. Datuk Seri Maglin and Datuk Mohan removed as directors of Bintang Iradat
d. Company Secretary changed to Vijayan
12.03.2019
a. 15,000 shares from Kumara Raja transferred to Kayveas Holdings
b. 70,000 shares from Shanker transferred to Kayveas Holdings
c. 15,000 shares from Datuk Lau Beng Wei transferred to Kayveas Holdings
d. Shanker and Kumara Raja resign as directors in Bintang Iradat
FINAL STRUCTURE OF BINTANG IRADAT
a. 100,000 shares (100%) held by Kayveas Holdings
b. Tan Sri M Kayveas is the sole director
12.02.2019
The Memorandum and Articles of Association of Bintang Iradat are abolished

A [71] Upon the transfer of shares being effected and Wisma myPPP now under his full control, Tan Sri Kayveas (D1) posted the following in the social media:


Liked by **intan_adeq3056** and **178 others**

mkayveas Made in Thailand bike. With Dato Sharif on the background. One of many lawyers who really know the law. Highly professional and cannot be influenced by non-legal minds. Taken just at the entrance of WISMA TAN SRI KAYVEAS. As the loaning of and permission to use the name wisma PPP was no longer essential the moment all court cases ended extraordinarily positive and in the beneficial owner's favour. Thus, trustees too removed correspondingly. Followed by the rental of myPPP at the 2nd floor being determined. Now pending all rental debts, damages and exemplary damages to be filed soon. Defamation suits included. All these agendums were activated the very instant the party got deregisterd. Thanks, and no thanks to those who made it possible. NATURAL JUSTICE indeed concluded by KARMA if you want to call it. Having brains is not enough. Must have the ability to think intelligently. Think correctly, rightly and lawfully. Drunken conspiracy was silly. Not everybody can be a leader by cheating and stealing position, telling lies, making up stories, instigating the innocent to make police and sprm reports, putting his own GURU down to climb. Such fraudster and hustler will never see the light of day. Followers will merely be degraded and ultimately downgraded. Indeed, already so to a pub oops! club or rather ngo. If you are yet to learn, you will never learn at all.

View all 13 comments

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[72] After the plaintiffs came to know of the transfer of the shares in Bintang Iradat (D3) and the changes made to the directorship, attempts were made to lodge two caveats to proscribe any dealings with Wisma myPPP. However, both applications were rejected. No reason was proffered. Police Reports and CCM reports were also lodged by Datuk Seri Maglin (P1) and Datuk Mohan (P6).

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[73] The plaintiffs then commenced this present action and applied for and obtained an injunctive order ex parte on 21 June 2019 to refrain any dealings with Wisma myPPP and the shares of Bintang Iradat (D3). The ex parte order was converted into an ad interim order by consent on 05 July 2019 and finally conceded to by the defendants on 10 August 2020.

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[74] Notwithstanding the injunctive orders, at the trial of this Suit, it was disclosed that Tan Sri Kayveas (D1) still sought to deal with Wisma myPPP.

THE ATTEMPT TO SELL WISMA MYPPP BY D1

[75] Evidence was adduced to show that on 4 April 2019, Tan Sri Kayveas (D1) had granted a power of attorney for and on behalf of Bintang Iradat (D3) to an individual named Datuk Abdul Hadi bin Abdul Hamid ('Datuk Hadi'), authorising Datuk Hadi to negotiate and sell Wisma myPPP.

[76] On 20 August 2020, after the injunctive orders had been crystallised, Datuk Hadi issued a letter of authorisation to his son, Encik Zahir and one Encik Azad Ali bin Ahmad Ali to source for funder and or buyer for Wisma myPPP.

[77] Both Encik Zahir and Encik Azad testified in the proceedings herein. They testified that Tan Sri Kayveas (D1) wanted to use the property to raise funds.

STRIKING OUT APPLICATIONS AND RELATED PROCEEDINGS

[78] On 2 August 2019, the defendants filed applications to strike out the plaintiff's action herein on the ground that the plaintiffs have no locus standi to commence the present action. According to the defendants, the plaintiffs have no proprietary interests in the assets of myPPP ('the defendants' striking out applications').

[79] An appeal was also made to the ROS on the cancellation of myPPP and on 7 October 2019, the ROS in response to the appeal made by Tan Sri Kaveas' camp against the de-registration of myPPP, issued a letter ('the ROS letter dated 7 October 2019') approving the appeal but subject to the following six conditions ('the conditions'):

i. Suatu pertikaian jawatankuasa parti myPPP hendaklah diselesaikan dengan melantik mana-mana pihak ketiga yang berkecuali sebagai sebuah badan yang mengawal dan menyelesaikan iasu pertikaian;

ii. pelantikan pihak ketiga yang terkecuali hendaklah dipersetujui oleh pihak-pihak yang bertikai di dalam parti myPPP dan hendaklah dimaklumkan kepada JPPM dengan kadar yang segera;

iii. suatu laporan berhubung penyelesaian pertikaian hendaklah disediakan oleh oihak ketiga yang berkecuali yang hendaklah dikemukakan kepada JPPM dengan kadar segera selepas siatu penyelesaian pertikaian dicapai bersama-sama oleh pihak yang bertikai dan persetujuan hendaklah secara kolektif;

iv. tempoh masa pelaksanaan bagi mengadakan oemilihan semula jawatankuasa majlis tertinggi parti adalah sehingga 31 Disember 2019 dan hendaklah mengikut tatacara ataupun peruntukan di dalam

perlembagaan myPPP sendiri. Sekiranya memerlukan lanjutan masa hendaklah mengemukakan kepada Pendaftar secara rasmi dan adalah kuasa Pendaftar untuk mempertimbangkan;

v. jawatankuasa yang bertanggungjawab bagi menyelesaikan isu pertikaian parti myPPP adalah terdiri daripada jawatankuasa 2014–2019 seperti di Lampiran 1; dan

vi. tugas jawatankuasa berkenaan adalah terhad untuk melantik pihak ketiga yang berkecuali dan melaksanakan pemilihan semula sahaja bagi tujuan penyelesaian pertikaian ini tanpa melaksanakan apa-apa aktiviti lain.

[80] On 6 January 2020, I dismissed the defendants' striking out applications and on 6 August 2020, the Court of Appeal dismissed the defendants' appeals and affirmed this court's decisions dismissing the defendants' striking out applications. The Court of Appeal held that there are numerous triable issues concerning the allegations of fraud, abuse of process and conspiracy and that the plaintiffs as ex-members of myPPP possess residual rights to maintain the present action.

[81] It is pertinent that in the defendants' striking out applications, the defendants did not at all challenge the decision by the ROS on 14 January 2019 to de-register the party. Neither did the defendants challenge the letter dated 7 October 2019 which was the decision by the Minister imposing the conditions as the prerequisites for the de-registration of the myPPP to be cancelled.

[82] Further, whilst the defendants' striking out applications were being litigated before this court, unbeknownst to the plaintiffs, various proceedings were filed in different parts of the country involving myPPP and or pertaining to its de-registration status. In particular:

(a) on 19 November 2019, Datuk Chandrakumanan (D4) filed a judicial review application at the High Court at Kuala Lumpur under WA-25–524–11 of 2019 ('the KL JR Suit') against ROS, Jabatan ROS and Home Affairs Minister seeking the following reliefs:

(i) that Datuk Chandrakumanan is the Vice President of myPPP;

(ii) that the appointment of the Supreme Council for 2014–2019 and 2018–2023 is legitimate;

(iii) that the conditions imposed by ROS is contrary to myPPP's Constitution;

(iv) that the time period given by ROS to resolve the dispute, until 31 December 2019 is ultra vires;

(v) that the appointment of the Supreme Council is to be via the AGM which is to be convened on or before 26 November 2019; and

(vi) that the terms of the ROS letter dated 7 October 2019 under paras 4(i)–(vi) and 5 be stayed.

(b) on 19 November 2019, one Dato' Sri Gandi filed an action at the High Court of Seremban against ROS, Tan Sri Kayveas (D1), myPPP and Dato' Ly (D5) under the Originating Summons No NA-24NCVC-349–11 of 2019 ('the Seremban OS') seeking the following reliefs:

(i) declaration that the next AGM is to be held on or before 26 November 2019;

(ii) declaration that the Supreme Council mentioned in article 8.5.1 is the Supreme Council appointed on 27 May 2018;

(iii) declaration that the Minister's decision according to s 18 of the Act is final and there is no legal provision to add conditions or cancel the society automatically;

(iv) declaration that according to article 8.2, the AGM is to be convened within 18 months; and

(v) declaration that ROS/myPPP cannot stop Dato' Ly (D5) from convening the AGM.

(c) on 20 November 2019, one Datuk Soma Sundaram filed an action at the High Court of Alor Setar under Originating Summons KA-24NCVC-1000–11 of 2019 ('the Alor Setar OS') seeking identical reliefs as in the Seremban OS.

[83] These proceedings were all taken out by persons aligned to Tan Sri Kayveas (D1)'s camp or involved persons aligned to him. As can be seen from the reliefs sought in these proceedings, the plaintiffs thereto are clearly aligned to Tan Sri Kayveas (D1)'s camp and are seeking to validate the proceedings of the 65th AGM dated 27 May 2018 thereby installing persons aligned to Tan Sri Kayveas (D1) as members of the Supreme Council and to have myPPP declared as being re-instated.

[84] The plaintiffs were completely kept in the dark of these proceedings. The effect of these proceedings will be to scuttle the plaintiffs' present action and to exclude the plaintiffs from being members of the Supreme Council of myPPP once its de-registration is cancelled. One of the consequences of these proceedings once myPPP is re-instated is that the plaintiffs' locus standi to continue with the present action will be adversely impacted.

[85] On the application by the plaintiffs, this court granted a quia timet injunction on 7 September 2020, restraining the first to eighth defendants

A from initiating any proceedings similar to the KL JR Suit, the Seremban OS and the Alor Setar OS.

[86] Significantly, as at the date of this trial, the KL JR Suit, the Alor Setar OS and Seremban OS have all been struck out.

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[87] No appeals were lodged against the striking out orders.

COURT'S DELIBERATION

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[88] In the present suit, the plaintiffs' pleaded claim is that the defendants, acting in concert and pursuant to a conspiracy to injure by unlawful means, have unlawfully caused: (1) the shares in Bintang Iradat (D3); and (2) Wisma myPPP to fall under the control of Tan Sri Kayveas (D1). The plaintiffs also seek to found a cause of action in the tort of abuse of court process.

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[89] It is useful to set out briefly the law dealing with the cause of action for conspiracy by unlawful means and cause of action for abuse of the court process.

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[90] The conspiracy was aided by an abuse of the court's processes, brought about by the recording of the consent judgment.

[91] The seminal case on conspiracy is *Renault SA v Inokom Corp Sdn Bhd & Anor and other appeals* [2010] 5 MLJ 394 where the Court of Appeal sets out four crucial ingredients to prove:

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(a) an agreement between two or more persons;

(b) an agreement for the purpose of injuring the plaintiff;

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(c) that acts done in execution of the agreement resulted in damage to the plaintiff; and

(d) damage.

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[92] The standard of proof is on a balance of probabilities. In *Manzer Medical Sdn Bhd & Ors v Bongsor Bina Sdn Bhd* [2018] 6 MLJ 574, the Court of Appeal applied *Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd* [2015] 5 MLJ 1:

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> [24] The standard of proof for conspiracy to defraud in a civil claim is on the balance of probabilities. In the Federal Court case of *Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd* [2015] 5 MLJ 1; [2015] 7 CLJ 584, our apex court had occasion to say as follows:
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> The correct principle to apply is ... where it was stipulated that at law, there are

only two standard of proof, namely beyond reasonable doubt for criminal cases and on the balance of probabilities for civil cases. As such, even if fraud is the subject in a civil claim, the standard of proof is on the balance of probabilities. There is no third standard. Therefore, it is up to the presiding judge, after hearing and considering the evidence adduced as being done in any other civil claim, to find whether the standard of proof was attained. The criminal aspect of the allegation of fraud and the standard of proof required is irrelevant in the deliberation.

[93] The courts have emphasised, on numerous occasions, that conspiracy will rarely be founded on direct evidence. Rather, it will be proven by inferences drawn from circumstantial evidence.

[94] Similarly, in *Kwan Ngen Wah & Ors v Hiew Kon Fah & Ors and other appeals* [2019] MLJU 226, Tengku Maimun JCA (currently CJ) emphasised as follows:

[107] *It must be appreciated that in cases of fraud or conspiracy, it is very rarely that there will be direct evidence where the fraudsters or conspirators will leave a trail of evidence of their fraudulent acts. It therefore suffices, under the law that surrounding circumstances and the conduct of the parties be considered and for the court to infer fraud or conspiracy from those circumstances and conduct.* The Federal Court in *PJTV Denson*, recognised the importance of surrounding circumstances in establishing the intent to defraud where it is stated that:

... Therefore, when the surrounding circumstances are capable of establishing a prima facie case of intent to defraud, the onus shifts on the appellants to disprove this if it can.

It is our opinion that the transfer was a mere cloak to deprive the judgment creditor of recourse to the property which would otherwise be applicable for its benefit. If this was not a case of deliberate fraud on the judgment creditor, we do not know what is ...

...

[110] Similar principles were reiterated in *Cubic Electronic Sdn Bhd (in liquidation) v MKC Corporate and Business Advisory Sdn Bhd and Another Appeal* [2016] 3 MLJ 797; [2016] 3 CLJ 676 *where this court stated that in cases of conspiracy, the plaintiff is never required to show the existence of the arrangements between the conspirators in the nature of an express agreement, whether formal or informal. As is often the case, the agreement or combination is to be inferred from the evidence.*

[111] *The lack of direct evidence should not therefore be the cause to defeat Kwan Brothers' counterclaim premised on fraud and conspiracy against the defendants. The law allows us to examine the relationship between the parties and to draw inferences from established facts.* (Emphasis added.)

[95] Further, in order to establish an unlawful means conspiracy (as opposed

to conspiracy through lawful means), it is necessary to establish an intention to injure the claimant but not a predominant purpose of intention to do so (see: *Kuwait Oil Tanker Co SAK and another v Al Bader and others* [2000] 2 All ER (Comm) 271).

[96] The tort of abuse of the court's process is set out in two decisions of the Federal Court and the Court of Appeal, namely in *Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd* [1999] 4 MLJ 637 (FC) and *Sibu Slipway Sdn Bhd v Yii Chee Ming & Ors and other appeals* [2017] 1 MLJ 368 (CA) respectively.

[97] *Sibu Slipway* applied the ratio of *Jasa Keramat* as follows:

> [24] *The concept of an abuse of the court's process is aptly set out in the case of Jasa Keramat Sdn Bhd & Anor v Monatech (M) Sdn Bhd* [1999] 4 MLJ 637; [1999] 4 CLJ 533 *('Jasa Keramat'). In that case Gopal Sri Ram JCA (as he then was) explained it as follows*:
>
> > It is trite that a person who has a legitimate grievance may invoke the court's process to obtain redress. *But cases may arise where the true purpose for invoking the court's process is something other than to obtain a remedy provided by law. It may be to oppress a defendant. Or it may be to apply pressure upon him which the law regards as illegitimate. Or it may be to merely commence an action and let it hang over the head of the defendant with no intention of bringing it to a conclusion ...*
> >
> > *... Since the circumstances in which the court's process may be abused are varied and numerous, the categories of such cases are therefore not closed. Whether the institution of an action or its continuation or a step taken therein amounts to an abuse of process depends on particular and individual circumstances. Where an action is found to be an abuse of the court's process, it may be struck out or stayed. If it is too late to do this, the party aggrieved may bring an action based upon the tort of abuse of process ...*
>
> ... The position has been neatly summed up by Lord Denning MR in his dissenting judgment in *Goldsmith v Sperrings Ltd & Ors* [1977] 1 WLR 478, where at p 489 he said:
>
> > In a civilised society, legal process is the machinery for keeping and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. *It is abused when it is diverted from its true course so as to serve extortion or oppression or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, if they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer.*
> >
> > Though a dissenting judgment, the principle enunciated by the Master of the Rolls has been accepted as authoritative of what constitutes an abuse of process ...
> >
> > *... It is plainly an abuse of the court's process where relief at law or in equity is used,*

not the remedy a genuine grievance, but as an instrument of oppression. There have been instances before our courts where an interlocutory injunction has been found to have been used as an instrument of oppression. We have always intervened in such cases and set the matter right ...

[25] *The foregoing paragraphs explain succinctly the definition of an abuse of process of the court.* Applied to the facts of our case, as stated earlier, it is clear that the winding up petitions were filed for a collateral purpose, namely to frustrate firstly, the application for a preservation of assets in Suit 16/3, and secondly, the joint trial of the nine suits in the Kuching High Court.

[26] What are the remedies available to this court? It is apparent from the case-law cited above that the court retains an inherent jurisdiction to intervene and set right or remedy the wrong that has occurred. (Emphasis added.)

[98] It is trite that a consent order that is obtained fraudulently and or without disclosing the full facts to the court is susceptible to being set aside.

[99] In *Lam Hooi Co Sdn Bhd v Tanjung Pasir Puteh Realty Sdn Bhd & Ors* [2019] MLJU 333, the High Court had occasion to consider a such a situation. Here, a consent judgment was utilised to remove the plaintiff's rights to a parcel of land:

[18] The plaintiff had immediately carried out the latest Title Search of the said Lot 24(3) on 12 November 2015, *where the plaintiff had found out that an Order dated 13 May 2015 obtained in the High Court of Malaya at Kuala Lumpur under Civil Suit No 21NCVC-28–04 of 2014 ('the KL Suit') had been registered pursuant to Presentation No 0799B2015006412 on the said Lot 24(3)*. The eighth defendant herein is the plaintiff in the KL Suit and the first, second, third, seventh, and ninth defendants herein were the defendants therein. *On 13 November 2015, the plaintiff had obtained a copy of the order which was a consent judgment dated 13 May 2015 ('the said consent judgment') that was fraudulently entered in concert by the first, second third, eighth and ninth defendants herein without making the plaintiff a party to the proceedings and without informing the court about the plaintiff's rights to the northern portion of the said Lot 24(3) which had the cumulative effect of defeating the plaintiff's rights to the northern portion of the said Lot 24 (3) although these defendants had knowledge of the plaintiff's 2012 and 2014 Caveats and the Registrar's Caveaton the said Lot 24(3) and that the plaintiff was in possession of the northern portion of the said Lot 24(3).* The said consent judgment had amongst others:

(a) declared the first defendant herein as the bona fide purchaser for valuable consideration of the said Lot 24(3) and that the said Lot is properly and correctly registered in the name of the first defendant.

(b) recognise that the eighth defendant as the beneficial owner of the southern portion of the said Lot 24(3) while disregarding the rights and interests of the plaintiff in the northern Portion of the said Lot 24(3).

(c) contained an Order for the said Lot 24(3) to be sold in an open market.

A [19] The plaintiff had on 21 November 2015 lodged a police report pertaining to the said consent judgment and entered a private caveat on 27 November 2015 ('the plaintiff's 2015 caveat') to prevent any dealings on the said Lot 24(3). (Emphasis added.)

B **[100]** Abdul Wahab JC (as His Lordship then was) proceeded to set aside the consent judgment:

[121] In this instant case, *it is crystal clear that the plaintiff was not a party in the Kuala Lumpur High Court in a Suit filed by the eighth defendants. There was ample evidence to show that the consent judgment was obtained without full disclosure of facts as the ninth defendant had failed to produce relevant documents ie a copy of the original title document for SG15304 and a copy of the original deed of re-conveyance which existed showing that the re-conveyance was duly registered and the plaintiff was never added as a party to the said case despite parties having be en aware of plaintiff's interest in Lot 24(3). The failure to make the plaintiff as a party of the said Kuala Lumpur High Court Suit should not then bind the plaintiff to the judgment without being given the fundamental right to be heard as it would amount to a severe injustice.*

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...

[124] The eighth defendant had adduced numerous evidences in support of his allegation of coercion on the part of the first to third defendants. Teh Lay Tin and Tan Hong Kook as the second and third defendants did not attend court. Neither of them, nor Dato' Ragu, came as witnesses to give evidence to rebut Ng Chek's evidence. This failure therefore invites the invocation of s 114(g) of the Evidence Act 1950 against the first to third defendants. *Evidence as adduced, taken as a whole, proves on a balance of probabilities that the eighth defendant was coerced into agreeing to the consent judgment being entered into. For the foregoing reasons above, it is in my considered view that the consent judgment should accordingly be set aside.* (Emphasis added.)

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F

G APPLICATION OF THE LAW TO THE FACTS IN THE PRESENT CASE

[101] Based on the testimonies given at the trial, I am satisfied that the consent judgment ought to be set aside as the said order was obtained without disclosure to the court that the party had been de-registered by the ROS on 14 January 2019.

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[102] The effect of the de-registration on 14 January 2019 is that all the office bearers of the party would cease to have any capacity and authority to act for and on behalf of the party. In Suit 796, Datuk Chandrakumanan (D4) had filed the action in his capacity as the Vice President of the party and Dato' Ly (D5) in turn was sued in his capacity as the Secretary General of the party. Both the parties would have lost their capacity and authority to act in their respective capacities once the party was deregistered on 14 January 2019. Yet, notwithstanding the aforesaid, neither of them had disclosed the fact of the

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Party's de-registration to the learned Judge when the consent judgment was recorded. A

[103] In fact, based on the minutes of the Supreme Council meeting on 4 April 2015, Datuk Chandrakumanan (D4)'s position in the Supreme Council had already been terminated by a unanimous decision of the party's Supreme Council. On 12 September 2015, the party's Supreme Council also unanimously terminated Datuk Chandrakumanan (D4) as a member of the party. B

[104] Accordingly, Datuk Chandrakumanan (D4) did not have the locus standi to institute Suit 796 on behalf of the party to begin with. This fact was not disclosed to the court at all. C

[105] Although, in the 27 May 2018 AGM, Datuk Chandrakumanan (D4) was purportedly elected as the Vice President of the party, the said AGM was never recognised by the ROS. The validity of the 27 May 2018 AGM is hotly disputed by Datuk Maglin (P1)'s camp. D

[106] In any case, the attempt by Datuk Chandrakumanan (D4) to have his position as the Vice President of the party recognised and validated in the KL JR Suit was dismissed and no appeal was filed against the dismissal. E

[107] More significantly, it seems clear to me that the entire Suit 796 was nothing more than a *contrived suit* filed in the High Court to take advantage of the court process to seize control of Wisma myPPP and to place the property in the sole custody of Tan Sri Kayveas (P1). The intention was clearly to use the imprimatur of the High Court as the means to cause the transfer of the shares in Bintang Iradat (D3) registered in the name of Datuk Seri Maglin (P1) and Datuk Mohan (P6) and to change the directorships of the company to persons aligned to Tan Sri Kayveas (P1). F G

[108] It is not in dispute that both Datuk Chandrakumanan (D4) and Dato' Ly (D5) were together with Tan Sri Kayveas (D1)'s camp in the leadership tussle against Datuk Seri Maglin (P1)'s camp within the party. H

[109] Whilst the present action is filed by Datuk Chandrakumanan (D4) on the ground that Dato' Ly (D5) as the Secretary General of the party had not complied with the resolution passed at the 27 May 2018 AGM for shares of Bintang Iradat (D3) and its directorships to be changed, no evidence had been adduced to show that Dato Ly' (D5) had failed or refused to take the necessary steps or actions to implement the resolution or that the circumstances were such that an action needed to be filed in court against him to compel compliance with the resolution. I

[110] More specifically, no evidence has been adduced to show that Dato' Ly (D5) had written to either Datuk Seri Maglin (P1) or Datuk Mohan (P6) with the requisite requests for the transfer of their respective shares in Bintang Iradat (D3) to Shankar Kandasamy (D7) and Kumara Raja (D8). Neither is there any evidence that requests were made to Datuk Seri Maglin (P1) and Datuk Mohan (P6) for their resignations as directors of Bintang Iradat (D3) pursuant to the resolution of the 27 May 2018 AGM.

[111] The reason I suspect that no such evidence is adduced or even pleaded in the statement of claim in Suit 796 is because both Datuk Chandrakumanan (D4) and Dato' Ly (D5) knew that the validity of the said resolution pertaining to the changes in the shares and directorships of Bintang Iradat would be challenged and disputed by Datuk Seri Maglin (P1) and Datuk Mohan (P6).

[112] Thus, although the prayers in Suit 796 would affect both Datuk Seri Maglin (P1) and Datuk Mohan (P6) as the registered shareholders and directors of Bintang Iradat (D3), neither of them was named as a party to the Suit 796 at all. It is not in dispute that neither of them was served with a copy of the writ of summons and the statement of claim as well.

[113] Further, it appears too convenient that Dato' Ly (D5) simply chose not to contest the claims by Datuk Chandrakumanan (D4) upon being served with the writ notwithstanding the allegation that he had failed to give effect to the aforesaid resolution of the 25 May 2018 AMT and the 27 May 2018 AGM.

[114] Even more telling is the fact that Dato' Ly (D5) had contacted Datuk Chandrakumanan (D4) after being served with the writ and statement of claim to inform him that the statement of claim ought to be amended and thereafter he was directed to liaise directly with Datuk Chandrakumanan (D4)'s solicitors, Messrs Jaafar & Menon in respect of the same. It is highly unusual to say the least for a defendant in an action to advise the plaintiff to improve his statement of claim.

[115] The statement of claim was duly amended by Datuk Chandrakumanan (D4) to include an additional para 10 stating that the party's Supreme Council had on 29 June 2013 decided that the trustee of Bintang Iradat (D3) was to be changed to the original purchaser and first shareholder of the company. A further prayer was also inserted to have Vijayan a/l Singaram (D6) to be re-appointed as the company secretary of Bintang Iradat (D3) in order to administer the registration of the transfer forms immediately.

[116] Dato' Ly (D5) also testified that he did not appoint any lawyers to represent him as he was working together with Datuk Chandrakumanan (D4) to record a consent judgment. He confirmed that the MOA was entered on his

behalf without him having to pay for the fee. He had no idea who made the payment after confirming that Tan Sri Kayveas (D1) and a lawyer from Messrs Jaafar & Menon by the name of Mr Lee Jun How were there at the time the MOA was filed.

[117] Further, during the hearing on 15 January 2019, the learned High Court judge had expressly highlighted to the parties his concern that Bintang Iradat (D3) was not made a party to the action and by reason thereof, Dato' Ly (D5) could only agree to take steps to *cause* the transfer of shares and the changes in directorship of Bintang Iradat (D3) to be done. In other words, the shares of Bintang Iradat (D3) could only be transferred by its registered shareholders and the change in the directors could only be effected by the shareholders of Bintang Iradat (D3) themselves.

[118] Notwithstanding the aforesaid, no steps were taken by Dato' Ly (D5) to give notice of the consent judgment to Datuk Seri Maglin (P1) and Datuk Mohan (P6) and to instruct them to comply with the terms of the same by transferring their shares in Bintang Iradat (D3) to Shanker Kandaswamy (D7) and Kumara Raja (D8) respectively and to resign as the directors of Bintang Iradat (D3).

[119] Instead, Dato' Ly (D5) had simply relied on the consent judgment as the instrument authorising him to sign the share transfer forms on behalf of Datuk Seri Maglin (P1) and Datuk Mohan (P6). The transfer forms were accepted by Vijayan (P6) as the newly appointed company secretary of Bintang Iradat (D3) who then lodged the same with the Companies Commissions of Malaysia after Shanker Kandasamy (D7) and Kumara Raja (D8) had executed the same as transferees.

[120] Similarly, the consent judgment was relied upon as the instrument authorising the newly appointed company secretary, Vijayan (D6) to remove Datuk Seri Maglin (P1) and Datuk Mohan (P6) as directors of Bintang Iradat (D3) without holding any shareholders' meeting of the company.

[121] The aforesaid was nothing short of a blatant abuse of the court process through the use of the consent judgment.

[122] A similar situation may be seen in the Indian case of *RG Shinde v State of Maharashtra* (1994) 1 MLJ 42 (SC). Here, facts are startlingly similar where the members of a Cooperative Society had colluded together to file a civil suit and recorded consent orders to ensure that a voting list (in their favour) would be utilised:

3. The Government in exercise of its power under Sec 77-IB of the Act postponed

A the conduct of election to the committees of all Co-operative Societies except those covered by orders of the courts till September 30, 1992. Two members by name Narayan Ganpat More and Mahadeo Bha-nudas Mule, filed WP No 2970 of 1992 in Bombay High Court on July 13, 1992 for a mandamus to the District Collector and election officer to conduct election to the committee of the Society forthwith B that is to say after the expiry of 30.9.1992 in accordance with Sec 73-GL and Chapter XI-A of the Act and the Rules and to complete the same within the minimum period as provided under the Act. By consent of the Society, through its Chairman AK Patil, the fifth respondent herein, the Division Bench passed minutes order that since the Government postponed the election up to September 30,1992, C the process of election to the Society shall commence from October 1,1992 and the Collector shall accordingly take suitable steps for holding the election. Following its heels More and Mule again filed another W.P.No 4107 of 1992 on September 15, 1992, for a direction to hold election on the basis of final voters list published on December 17, 1991. Again AK Patil, Chairman took notice put forth consent minutes and the Division Bench accepted it and directed by order dated September D 28,1992 that 'respondent No.4 (Society) shall submit provisional list of voters as on June 30, 1992 as per Rule 4 of the Rules on or before October 10,1992. The Collector thereupon shall complete the finalisation of the said list under Rule 6 and then shall pronounce election programme under Rule 16 for holding the elections of the Committee of the Society and to complete the same within the prescribed E time under the Rules'. Thereafter on October 6, 1992 the election officer asked the society to submit fresh provisional list as on June 30,1992. On becoming aware of the above order, on October 16, 1992, the appellants filed WP No 4400 of 1992 to modify the order dated September 28,1992 made in WP No 4107 of 1992 and to direct the respondents 1 to 3 the State Government (District Collector and election F officer) to hold election to the committee on the basis of the final voters list published on December 17, 1991 and to set aside the consequential orders. The Division Bench by the impugned judgment dated October 19,1992 dismissed the writ petition in limine. Thus this appeal by special leave. Notice was served on all the respondents in this appeal. AK Patil, Chairman, respondent No.5 was served on December 23,1992. More, 6lh respondent was served on December 18,1992 and G Mule, 7th respondent was served on December 16,1992. They did not appear either in person or through counsel. The Society was represented by counsel.

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6. It is the case of the appellants that after the final list was published by the District H Collector on December 17,1991, AK Patil, the Chairman, got enrolled 2,000 members and made them eligible to exercise franchise in his favour apprehending that he would be defeated in the general election, colluded with More and Mule, ie Director and a member of the society respectively, got filed collusive writ petitions, abused the process of the court, played fraud on the court and obtained collusive orders to make the provisional list of voters to be as on June 30,1992 and to conduct I elections on that basis.

8. *It would be obvious that AK Patil, Ex-chairman of the defunct Committee with a view to get over that impediment and to enable newly admitted 2000 members after December 17,1991, set up More, a co-director and Mule, alleged to be his friend, got filed the first writ petition and obtained a direction to conduct election following its heels*

got filed second writ petition with a format of legal process but immediately Patil intervened and appeared on the very date of admission; put forth consent order and obtained the order from the court to conduct election as per the provisional list existing as on June 30,1992 and got issued the direction to the Collector with the mandate to conduct election in accordance with that list. It was specifically alleged that Patil colluded with More and Mule, abused the process of the court, played fraud on the court and obtained minutes order by consent without knowledge to any member of the society. *In the absence of any denial of the allegations and in the light of the background of the case the necessary inference to be unerringly deduced would be that the consent order is a collusive and fraudulent order made format of due process of law but obtained orders contrary to the statutory mandate of Rule 4(1) of the Rules. It could thus be seen that none of the members of the society had any opportunity to know or to oppose the consent order. Thereby the necessary conclusion would be that a collusive order obtained by abuse of the process of the court by playing fraud on the court, became foundation to conduct elections to the Managing Committee of the society circumventing the mandate of Rule 4(1) of the Rules.*

14. Respect for law is one of the cardinal principles for an effective operation of the constitution, law and the popular Government. The faith of the people is the source and succour to invigorate justice intertwined with the efficacy of law. The principle of justice is ingrained in our conscience and though ours is a nascent democracy which has now taken deep roots in our ethos of adjudication be it judicial, quasi-judicial or administrative as hallmark, the faith of the people in the efficacy of judicial process would be disillusioned, it the parties are permitted to abuse its process and allowed to go scot free. It is but the primary duty and highest responsibility of the court to correct such orders at the earliest and restore the confidence of the litigant public, in the purity of fountain of justice; remove stains on the efficacy of judicial adjudication and respect for rule of law, lest people would lose faith in the courts and take recourse to extra-constitutional remedies which is a death-knell to the rule of law.

18. ... *An order obtained by abuse of the process of the court or by playing fraud or collusion, this Court would not countenance such an argument and should not allow such an order to remain operative for a moment.* We are not equally impressed with the argument that the respondent now became aware that Mr. Patil secured more than 4 to 5 thousand votes though the invalid votes are only of 2 thousand, being the members admitted after December 17, 1991, and that be a factor for our declining to exercise the power under Art. 136 to set aside the order of the High Court or the elections conducted pursuant to the permission granted by this Court. *In our view, acceding to it would amount to putting a premium on fraud, collusion or abuse of the process of the court creating disbelief and disillusionment of the efficacy of judicial process and rule of law and a feeling would be generated that persons capable to manoeuvre and abuse the judicial process would reap the benefit thereof and get away with the orders. Every endeavour would be made to inculcate respect for fair judicial process and faith of the people in the efficacy of law.*

19. Though normally when a respondent is not contesting its case, costs would not be awarded. But an exception would be carved out and in a suitable case cost should be awarded on persons that set the law in motion; had benefit thereof and remained obviously ex parte. This Court under Art. 142 has plenary power 'to pass such orders

A as is necessary for doing complete justice in any cause or matter coming before it'. *The facts of this case already established that the respondents Nos. 5 to 7, in particular AK Patil, must be lurking and loitering in the corridors of this Court for the outcome, though obviously remained ex parte. It is a fit case for exercising our power underArt.142 to impose cost on the non-contesting respondents, A.K.L.Patil, More and Mule, jointly or severally. Costs are quantified at Rs.20,000 and the appellants are entitled to recover the costs of this appeal against any one of them or all of them.*

B

20. *It is hereby declared that election process conducted by the third respondent, District Deputy Registrar, Co-operative Society, Solapur to the Society is illegal. The final list of voters published by the District Collector, Solapur, as on June 30, 1992 is declared illegal.* The final voters list declared on December 17, 1991 relating to the society is the valid list. *Accordingly, the order of the High Court in WP No 4107 of 1992 dated September 15, 1992 is modified. The direction to the District Collector and the third respondent, District Deputy Registrar, Co-operative Society, Solapur to proceed as per Rules 4 to 7 and 16 to conduct election to the committee of the society in accordance with the Rules is upheld with the above modification. The election held to the Managing Committee of the society on April 27, 1993 is declared illegal and invalid. Respondent Nos.2 and 3 are directed to conduct the election as per Rules consistent with the above order. The appeal is allowed accordingly with costs as fixed above.* (Emphasis added.)

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E **[123]** Based on the authority above, I am of the similar view that an order obtained by abuse of the process of the court or by playing fraud or collusion should not be countenanced and such an order should not be allowed to remain operative for a moment. Hence, the consent judgment which is nothing short of a fraud on the court and which is unlawfully procured ought to be set aside.

F

PARTIES TO CONSPIRACY BY UNLAWFUL MEANS

G **[124]** Based on the aforesaid, it is clear that the consent judgment was procured for the purpose of securing control and possession of the property, Wisma myPPP, into the hands of Tan Sri Kayveas (D1). The plan was put into motion sometime prior to or at the time of the 25 May 2018 AMT and or the 27 May 2018 AGM.

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[125] Whilst there was nothing unlawful about the resolution to remove Datuk Seri Maglin (P1) and Datuk Mohan (P6) as directors and shareholders of Bintang Iradat (D3) that was carried out at the 27 May 2018 AGM (not taking into account the challenge to its validity by Datuk Seri Maglin (P1)'s camp), what made it unlawful was the intention to deprive the party of its possession, control and beneficial ownership of the shares of Bintang Iradat (D3) and the property, Wisma myPPP and placing the same in the hands of Tan Sri Kayveas (D1). The means to achieve this objective was by filing the Suit 796 and securing by unlawful means the consent judgment.

I

[126] In this regard, the Federal Court had in Civil Appeal No 02–10 of 2012(W) proceeded with the case thereto on the premise that the shares of Bintang Iradat (D3) and the ownership of Wisma myPPP are *both* properties belonging to myPPP. There is no other judgment that suggests otherwise.

[127] Thus, notwithstanding Tan Sri Kayveas (P1)' testimony that he is the true beneficial owner of the property, Wisma myPPP, I am not persuaded that it is in fact the case. Even in the statement of claim filed by Datuk Chandrakumanan (D4) in Suit 796, para 4 of the same expressly stated that Wisma myPPP was purchased *by the party* through a public auction using Bintang Iradat (D3) as its investment company. The same statement of claim at para 8 also confirmed and acknowledged the decision of the Federal Court in Civil Appeal No 02–10 of 2012(W) that I alluded to above.

[128] I must stress that no evidence was adduced at the trial to demonstrate to this court what exactly were understood by the members who had voted at the 27 May 2018 AGM as regards the ultimate ownership of the shares of Bintang Iradat (D3) and the ownership of Wisma myPPP. This is because the actual motions that were carried at the 25 May 2018 AMT and 27 May 2018 AGM were worded in rather ambiguous terms, namely:

> 25.5.2018 AMT:
>
> II. Memindah hakmilik bangunan myPPP kepada *pemilik asal (beneficial owner)* seperti berikut:
>
> (a) Datuk Mohan Kandasamy be replaced as Director by Kumara Raja a/l Arumugam (Nric No: 610410-71-6059), Datuk Seri Maglin Dennis D'Cruz replace by Shanker Kandasamy (Nric No:660114-10-6545) to remain as Director; and
>
> (b) The shareholding be as follow:
>
> | | |
> |---|---|
> | Kumara Raja a/l R Arumugam | 15% |
> | Shanker Kandasamy | 70% |
> | Datuk Lau Beng Wei | 15% |
>
> 27.5.2018 AGM:
>
> In accordance to Article 24.2 and Article 24.4 myPPP Constitution, the names of ceased members as per Article 30.3 namely Datuk Mohan Kandasamy and Datuk Seri Maglin Dennis D'Cruz be dismissed and removed from the company Bintang Iradat (M) Sdn Bhd as per Supreme Council decision taken on the 25 May 2018 Bil. 05/2018 as Directors and Shareholders *holding on trust for the party on behalf of the beneficial owner Tan Sri Datuk Seri M Kayveas and transferred accordingly back to him* to avoid future legal tussle by members who do not understand the meaning of holding trust.

[129] Thus, whilst the motion at the 25 May 2018 AMT merely referred to

A the 'pemilik asal (beneficial owner)' without identifying the entity, the motion at the 27 May 2018 referred to the directors and shareholders 'holding on trust for the party on behalf of the beneficial owner Tan Sri Datuk Seri M Kayveas'.

B **[130]** How the directors and shareholders of Bintang Iradat (D3) ended up from holding the shares of the company in trust for the party to 'holding on trust for the party on behalf of the beneficial owner Tan Sri Datuk Seri M Kayveas' is difficult to fathom. The position appears to contradict the decision of the Federal Court in Civil Appeal No 02–10 of 2012(W).

C **[131]** Notwithstanding the aforesaid, for our present purpose, what is unacceptable and illegal is the conspiracy through the unlawful use of the court process via the filing of the Suit 796 and the procuring of the consent judgment to 'legitimise' the taking of the shares of Bintang Iradat (D3) and the property, Wisma myPPP from the party into the hands of Tan Sri Kayveas (D1).

D

[132] With regard to the filing of the Suit 796 and the procuring of the consent judgment, the following individuals were clearly involved from the evidence before this court, namely:

E (a) Datuk Chandrakumanan (D4);

(b) Dato' Ly (D5); and

(c) Tan Sri Kayveas (D1).

F **[133]** Both Datuk Chandrakumanan (D4) and Dato' Ly (D5) were clearly acting at the behest of Tan Sri Kayveas (D1). Both confirmed that they were acting at all times on the instructions of Tan Sri Kayveas (D1) as regards the filing of the writ and statement of claim in the Suit 796. Dato' Ly (D5) candidly admitted that he was working together with Datuk Chandrakumanan (D4) to record the consent judgment. He further confirmed that Tan Sri Kayveas (D1) was present when the consent judgment was recorded. In fact, the writ for Suit 796 was served on Dato' Ly (D5) when he was at Wisma myPPP and Tan Sri Kayveas (D1) was present at the material times. Dato' Ly (D5) also testified that he had discussions with Tan Sri Kayveas (D1) on the Suit 796 and that Tan Sri Kayveas (D1) had advised him on the amendments that were needed to be made. The relevant testimonies of Datuk Chandrakumanan (D4) and Dato' Ly (D5) are reproduced:

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GJ: Did you talk to a Chinese gentleman named Mr Lee Jun How?

I CHANDRA: As I said I can't remember.

GJ: Did you discuss with Dato' Menon?

CHANDRA: Yes, of course Dato' Menon is my solicitors, my counsel for the property

GJ: *And did you also discuss this with Tan Sri M Kayveas?*

CHANDRA: *Of course party President we take instruction from him.*

GJ: *And Dato' Roger Ly also was taking instructions from Tan Sri Kayveas. Correct?*

CHANDRA: *Correct. He is the Secretary General.*

Refer: pp 1113, Notes of Proceedings

GJ: *So how did you discover that there were amendments that needed to be made to a statement of claim?*

LY: *I have some discussion with my President party.*

GJ: *I see. So you discussed with Tan Sri and he told you the claim needs to be amended. Correct?*

LY: Yes.

GJ: *And Tan Sri advised you what the amendments needed to be made. Correct?*

LY: *Yes, correct. Final decision.* (Emphasis added.)

[134] All the three of them, Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) and Dato' Ly (D5) had proceeded with their plan to deprive the party of the shares of Bintang Iradat and the property, Wisma myPPP notwithstanding that they were fully aware that the true beneficial owner of the said shares and property belong to the party pursuant to the Federal Court's decision in the Civil Appeal No 02–10 of 2012(W) and reiterated in the statement of claim filed in Suit 796 itself.

[135] As regards Vijayan (D6), Shanker Kandasamy (D7), Kumara Raja (D8) and Datuk Lau (D9), it is my judgment that their presence at the 27 May 2018 AGM and their participation per se in the motion where they had voted in favour of the transfer of shares and change of directorship of Bintang Iradat (D3) *without more* cannot be equated to any participation in the unlawful means conspiracy. In fact, there is nothing to suggest that any of them was even aware that an action would be commenced by Datuk Chandrakumanan (D4) against Dato' Ly (D5) to seek the 'enforcement' of the resolution that was passed at the 27 May 2018 AGM.

[136] There is also no evidence that Vijayan (D6), Shanker Kandasamy (D7), Kumara Raja (D8) and Datuk Lau (D9) were even aware of the Suit 796 when the same was contemplated and subsequently filed. More specifically, there is no evidence that any of them was involved in procuring the consent judgment although Vijayan (D6), Shanker Kandasamy (D7) and Kumara Raja (D8) were named in the consent judgment. At the highest, the evidence from both Shanker Kandasamy (D7) and Kumara Raja (D8) shows that both of them had merely consented to act as the transferees of the shares of Bintang

Iradat (D3) to be transferred by Datuk Seri Maglin (P1) and Datuk Mohan (P6). Similarly, Vijayan (D6) had merely agreed to be re-appointed as the company secretary of Bintang Iradat (D3). Neither of the aforesaid facts can be taken to mean that any of them was privy to the scheme to deprive the party of its ownership of the shares of Bintang Iradat (D3) and ownership of Wisma myPPP vide the unlawful means of filing a contrived action and procuring the consent judgment.

[137] Accordingly, although learned counsel for the plaintiffs had placed emphasis on the attendance by Vijayan (D6), Shanker Kandasamy (D7), Kumara Raja (D8) and Datuk Lau (D9) at the 27 May 2018 AGM as support of their involvement as co-conspirators in the unlawful transfer of the shares of Bintang Iradat (D3), I would with respect to learned counsel for the plaintiffs, give little if at all, any weight to the same.

[138] As correctly pointed out by learned counsel for the plaintiffs himself in his written submissions, it is the consent judgment dated 16 January 2019 which was the lynchpin upon which the conspiracy unfolded. The attendance at the 27 May 2018 AGM which took place more than 7 months prior to the consent judgment has no bearing to the conspiracy at all.

[139] Further, the actions taken by Vijayan (D6), Shanker Kandasamy (D7) and Kumara Raja (D8) after the consent judgment was obtained also do not suggest that they were parties to the procuring of the consent judgment and or were privy to the conspiracy to transfer the shares of Bintang Iradat (D3) and the property Wisma myPPP from its lawful owner ie the party to Tan Sri Kayveas (D1).

[140] Based on the terms of the consent judgment, Dato' Ly (D5) was to take steps to re-appoint Vijayan (D6) as the company secretary and to administer the registration of the transfer forms immediately.

[141] Under cross-examination, Vijayan (D6) conceded that the consent judgment does not expressly order for his appointment as the Company Secretary of Bintang Iradat (D3). However, he testified that he was requested to become the Company Secretary of Bintang Iradat (D3) by Dato' Ly (D5) based on the terms of the consent judgment. There is no evidence that Vijayan was aware of the true ownership of the shares of Bintang Iradat (D3) and or the property, Wisma myPPP. Neither is there any evidence that Vijayan (D6) was 'in the know' of the intention to deprive the party of the aforesaid assets.

[142] Vijayan (D6) also confirmed that he had effected the transfer of the shares that were registered in the name of Datuk Seri Maglin (P1) and Datuk Mohan (P6) based on the transfer forms that were signed by Dato' Ly (D5)

purportedly on behalf of Datuk Seri Maglin (P1) and Datuk Mohan (P6). He testified that he had accepted the aforesaid transfers in reliance on the consent judgment which expressly ordered Dato' Ly (D5) to take steps to transfer the shares even though he conceded that this was not standard practice.

[143] Vijayan (D6) further agreed during cross-examination that the consent judgment does not provide for the removal of Miss Lim Wai Yee as the Company Secretary of Bintang Iradat (D3). Nevertheless, Vijayan (D6) testified that he had proceeded to replace Miss Lim Wai Yee as the Company Secretary of Bintang Iradat (D3) under the belief that that consent judgment which ordered for steps to be taken to re-appoint him as the Company Secretary of Bintang Iradat (D3) would necessarily mean that Miss Lim Wai Yee was to be replaced.

[144] Based on the aforesaid, all that can be said of Vijayan is that he had acted on instructions given to him by Dato' Ly (D5) and based on what in his beliefs were provided for by the terms of the consent judgment. It cannot be said that he was involved in the procuring of the consent judgment nor can it be said that Vijayan (D6) was involved in any agreement to injure the plaintiffs as members of the party.

[145] Shanker Kandasamy (D7) and Kumara Raja (D8) were the recipients of the shares transferred from Datuk Seri Maglin (P1) and Datuk Mohan (P6) respectively. Both of them were nominated at the 27 May 2018 AGM to hold these shares in trust for myPPP. Both were also appointed directors of Bintang Iradat (D3) in place of Datuk Seri Maglin (P1) and Datuk Mohan (P6) on the strength of the consent judgment.

[146] Shanker Kandasamy (D7) is Tan Sri Kayveas (D1)'s nephew and Kumara Raja (D8) is Tan Sri Kayveas (P1)'s driver. Shanker Kandasamy (D7) testified that he was told of the Suit 796 from Tan Sri Kayveas (D1), Datuk Chandrankumanan (D4) and Dato' Ly (D5) and he had agreed to hold the shares of Bintang Iradat (D3) and to be its director. Kumara Raja (D8) in turn testified that he trusted Tan Sri Kayveas (D1) completely and signed whatever documents that was instructed by Tan Sri Kayveas (D1). On the aforesaid basis, Shanker Kandasamy (D7) and Kumara Raja (D8) became the shareholders of Bintang Iradat (D3).

[147] Both Shanker Kandasamy (D7) and Kumara Raja (D8) subsequently executed transfer forms at the direction of Tan Sri Kayveas (D1) for all the shares of Bintang Iradat (D3) that were registered in their respective names to Kayveas Holdings Sdn Bhd (D2).

[148] As with Vijayan's case, both Shanker Kandasamy (D7) and Kumara

Raja (D8) were not involved at all in the filing of the 796 Suit and procuring the consent judgment. They had executed the transfer forms based on the directions given by Tan Sri Kayveas (D1) and nothing more. It is not demonstrated that they were privy to any agreement to have the shares of Bintang Iradat (D3) and the property, Wisma myPPP to be taken from the party to Tan Sri Kayveas (D1). As I have alluded to earlier, the motion carried at the 27 May 2018 AGM is ambiguous as to whom the beneficial owner of the shares belongs. There is no evidence that Shanker Kandasamy (D7) and Kumara Raja (D8) were aware of the decision of the Federal Court in the Civil Appeal No 02–10 of 2012(W) and averments made in the statement of claim filed in Suit 796 itself.

[149] As regard Datuk Lau (D9), his only significant part was the transfer of his 15,000 shares in Bintang Iradat (D3) to Kayveas Holdings Sdn Bhd (D2). According to Vijayan (D8), after the consent judgment, he had brought Datuk Lau (D9)'s transfer form for Datuk Lau (D9) to sign at Tan Sri Kayveas (D1)'s office. Vijayan (D6) said that he did give to Datuk Lau (D9) the transfer form but he left before Datuk Lau (D9) had signed the form. Subsequently, the duly executed transfer form by Datuk Lau (D9) was delivered to him.

[150] However, Datuk Lau (D9) gave a different account on the matter. He said that he had signed a transfer form in blank and handed the same to Tan Sri Kayveas (D1) sometime in mid-2018. He gave detailed account of the circumstances why he decided to execute the transfer form in blank to Tan Sri Kavyeas (D1) in mid-2018.

[151] Learned counsel for the plaintiffs urged this court to accept the testimony of Vijayan (D6) which if accepted would lend some support to the plaintiffs' contention that Datuk Lau (D9) was a participant to the conspiracy to deprive the party of the property, Wisma myPPP and the shares of Bintang Iradat (D2).

[152] With respect to learned counsel for the plaintiffs, merely executing the transfer form alone cannot be a sufficient reason to infer that Datuk Lau (D9) was a party to the agreement to procure the consent judgment with the object of transferring the shares of Bintang Iradat (D3) from the party. At its highest, even accepting the testimony of Vijayan (D6) as true, all that can be said of Datuk Lau (D9) was that he had agreed to relinguish his role as the trustee of the shares of Bintang Iradat (D3) and had left it to the party to decide as to whom to take over from his as trustee to those shares, including Kayveas Holdings Sdn Bhd (D2).

[153] Learned counsel for the plaintiff referred this court to the following passages by Nourse LJ in *Kuwait Oil Tanker Co SAK and another v Al Bader and*

others at paras 111 and 133 at pp 313 and 320 of the report respectively where the learned judge held thus:

> 111. ... Thus it is not necessary for the conspirators all to join the conspiracy at the same time, but we agree with the judge that the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of. In a criminal case juries are often asked to decide whether the alleged conspirators were 'in it together'. That may be a helpful question to ask, but we agree with Mr Brodie that it should not be used as a method of avoiding detailed consideration of the acts which are said to have been done in pursuance of the conspiracy'
>
> 133. It does not follow from the above that each defendant must personally take part in every act so long as it is done pursuant to the agreement. Moore-Bick J put the matter in this way (at p 126):
>
> > Of course, as in any case of this kind, it is necessary to examine the evidence with care to see whether each defendant was involved in each fraudulent transaction, but once one reaches the conclusion that the defendants combined to steal from their employer by whatever means might present themselves, the question in relation to any particular scheme or enterprise in which only one or some of them can be shown to have directly participated is whether that enterprise fell within the overall scope of their common design. If several people agree to enable each other to steal from their employer, lending their support in different ways at different times and taking different shares of proceeds (or even each retaining for himself what he takes), each of them is party to the agreement pursuant to which all the thefts take place. In those circumstances there is in my judgment no need for each to be fully aware of the circumstances of each theft in order for him to be liable as a conspirator provided that the theft in question falls within the scope of the agreement.

[154] In reliance on the aforesaid passages, learned counsel for the plaintiffs contended that Vijayan (D6), Shanker Kandasamy (D7), Kumara Raja (D8) and Datuk Lau (D9) ought to be treated as co-conspirators to Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) and Dato' Ly (D5) because each of them had played a vital role to enable the object of the conspiracy to be achieved. It is submitted that there is no need for Vijayan (D6), Shanker Kandasamy (D7), Kumara Raja (D8) and Datuk Lau (D9) to join in and or participate in the filing of the Suit 796 and procuring the consent judgment. It is sufficient that each of them had consented to lend their respective names to the consent judgment and thereafter to play their parts in reliance on the consent judgment to ultimately vest the shares of Bintang Iradat (D3) in Kayveas Holdings Sdn Bhd (D2).

[155] With respect to learned counsel for the plaintiffs, I do not share his view that merely because the person had performed an act necessary to complete or meet the object of the conspiracy that it must necessarily follow that the person ought to be considered as a co-conspirator. Whilst it is true that

all conspirators need not join at the same time and that each conspirator need not personally take part in every act done in the conspiracy, it is nevertheless vital that to be a co-conspirator, he must be fully aware of the circumstances under which his action is but a part, albeit an important part and that he shared the same object of injuring the plaintiff.

[156] It will not suffice if the person had merely acted based on instructions given by the main conspirators without appreciating the overall object that has as its underlying intention, causing harm or injury to the plaintiff. It is necessary to demonstrate that the action by the person was in fact done in execution of the agreement.

[157] In the present case, it is my judgment that the plaintiffs have not been able to show on the balance of probabilities that Vijayan (D6), Shanker Kandasamy (D7), Kumara Raja (D8) and Datuk Lau (D9) were parties to the conspiracy by Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) and Dato' Ly (D5) to deprive the party from the shares of Bintang Iradat (D3) and the property, Wisma myPPP vide the filing of the Suit 796 and the consent judgment. Indeed, there is nothing to suggest that they were aware that the Suit 796 was contrived and the consent judgment was unlawful. All that they had done was to take steps to comply with the terms of the consent judgment and to follow the instructions given to them for that purpose. The element of common intention has not been adequately proven.

DEFENCES RAISED

[158] Learned counsel for the first to eighth defendants raised the following legal issues in respect of the plaintiffs' claims, namely:

(a) whether this court has the jurisdiction to determine the merits of any disputes between members of a political party;

(b) whether the plaintiffs have locus standi to initiate and maintain the present suit;

(c) whether Datuk Chandrakumanan (D4) had locus standi to initiate Suit 796; and

(d) whether the shares of Bintang Iradat (D3) and the property, Wisma myPPP are properties of myPPP.

[159] With respect to learned counsel for the first to eighth defendants, all the above legal issues have already been finally determined by the court in the striking out applications, the KL JR Suit, the Alor Setar OS, the Seremban OS and the Federal Court in the Civil Appeal No 02–10 of 2012(W).

[160] More specifically, in the striking out applications, this court had dealt with the following grounds raised by the defendants, namely: A

(a) the plaintiffs lack locus standi and or capacity to sue the defendants as the plaintiffs have no proprietary rights to the properties of myPPP. The right, according to the defendants belong to the DGI following from the consequences of the de-registration of myPPP under s 17 of the Act; B

(b) given that the DGI has decided that it had no powers or authority to commence this action, the plaintiffs' proper recourse is to apply to the court for judicial review of the DGI's decision under s 86 of the Insolvency Act 1967 or s 517 of the Companies Act 2016 ('the CA 2016'); C

(c) the plaintiffs are caught by article 30.4 and 36.1.1 of myPPP's Constitution which read as follows:

> 30.4 In any event a Party Member or any person who claims to be a Party Member and who directly or indirectly brings matter regarding the Party or regarding his rights of membership in the Party to Court shall automatically cease to be a member of the Party. D
>
> 36.1.1 I declare that I shall automatically cease to be a member of the Party if I bring Party matters to Court. E

(d) based on the articles, the defendants had contended that the plaintiffs' action had resulted in their membership to be terminated automatically which in turn means that the plaintiffs lack locus standi to maintain this action. F

(e) the plaintiffs lack locus standi to bring this action as their memberships were automatically terminated when:

  (i) the plaintiffs launched a *coup d'etat* against the then President of the party, MyPPP; G

  (ii) the plaintiffs had acted in conflict of various articles of myPPP's Constitution and s 18C of the Societies Act 1966.

(f) the ROS had by the letter dated 7 October 2019 granted a conditional approval revoking the de-registration of MyPPP and the High Court had ordered an interim stay of the conditions which according to the first to eighth defendants meant that the revocation of the de-registration had become no longer conditional. H

[161] All these grounds were *finally* determined when the Court of Appeal affirmed the decisions of this court dismissing the striking out applications as there was no further appeals filed thereafter. I

[162] Similarly, the issue relating to the status of Datuk Chandrakumanan

(D4) has been conclusively and *finally* determined by the High Court in the KL JR Suit when the learned judge thereto dismissed the KL JR Suit in its entirety and no appeal was filed against the decision.

[163] In any case, the contention raised based on the alleged *coup d'etat* must be rejected as this is not raised by the first to eighth defendants in their pleadings at all. In fact, the evidence relating to the alleged *coup d'etat* was also not led at the trial.

[164] As regards the ownership of the shares of Bintang Iradat (D3) and the property, Wisma myPPP, this has been determined by the Federal Court in the Civil Appeal No 02–10 of 2012(W) which has been alluded to above.

[165] In any case, Datuk Chandrakumanan (D4) had in the statement of claim filed in Suit 796 expressly stated that the shares and the property held by Bintang Iradat (D3) were held in trust for the party.

[166] Hence, the legal issues raised by the first to eighth defendants are no longer tenable being caught by the doctrine of res judicata.

IDD 35, 36 AND 37

[167] During the trial of this action, counsel for the first to eighth defendants had sought to admit the following documents through their witnesses:

(a) letter reference No PPM/WKL/0021/53 JLD 15(11) dated 1 September 2021 from the ROS to myPPP ('IDD 35');

(b) letter reference No PPM/WKL/0021/53 JLD 15(7) dated 27 July 2021 ('IDD 36'); and

(c) letter reference No PPM/WKL/0021/53 JLD 15(19) dated 8 September 2021 ('IDD 37')

[168] Learned counsel for the plaintiffs had indicated that he has no objection to the admission of the documents on condition that the original copies are produced and tendered to court. This was done.

[169] Accordingly, IDD 35, IDD 36 and IDD 37 are converted into D35, D36 and D37. However, in my judgment, nothing turns on these documents.

CONCLUSIONS

[170] Premised upon the grounds above, I hereby make the following orders:

(a) a declaration that the consent judgment dated 16 January 2019 as recorded in the Civil Suit No WA-22NCC-551–12 of 2018 be set aside and is void and unenforceable;

(b) an order that a permanent injunction be granted to prohibit the first, second, fourth and fifth defendants and or their agents, servants and or representatives from transferring, selling, charging, pledging and or disposing any of the shares of Bintang Iradat (M) Sdn Bhd save and except in accordance with the terms of this judgment;

(c) an order that a permanent injunction be granted to prohibit the first, second, fourth and fifth defendants and or their agents, servants and or representatives from transferring, selling, charging, pledging and or disposing any part of the property under Geran 65301, Lot 1176, Seksyen 69, Bandar Kuala Lumpur located at No 74, Jalan Rotan, Off Jalan Kampung Attap, 50460 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur in any manner save in accordance with the terms of this judgment;

(d) a declaration that entire 100,000 shares of Bintang Iradat (M) Sdn Bhd presently registered in Kayveas Holdings Sdn Bhd be vested in the Director General of Insolvency following the de-registration of myPPP on 14 January 2019 and be treated as part of the property of myPPP;

(e) a declaration that the property under Geran 65301, Lot 1176, Seksyen 69, Bandar Kuala Lumpur located at No 74, Jalan Rotan, Off Jalan Kampung Attap, 50460 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur is the property of myPPP and shall be vested in the Director General of Insolvency following from the de-registration of myPPP on 14 January 2019; and

(f) an order that the first, second, fourth and fifth defendants and or their agents, servants and or representatives to vacate and grant vacant possession of the property under Geran 65301, Lot 1176, Seksyen 69, Bandar Kuala Lumpur located at No 74, Jalan Rotan, Off Jalan Kampung Attap, 50460 Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur to the Director General of Insolvency forthwith.

[171] Learned counsel for the plaintiffs have applied for a permanent quia timet injunction to be granted in terms similar to the interim quia timet order that was made by this court on 7 September 2020 restraining the first to eighth defendants from initiating any proceedings similar to the KL JR Suit, the

Seremban OS and the Alor Setar OS. I am not inclined to do so as I can see no evidence that similar proceedings are imminent given the dismissal of the KL JR Suit, the Seremban OS and the Alor Setar OS.

[172] Learned counsel for the plaintiffs have sought for the imposition of exemplary damages against the Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) and Dato' Ly (D5) for their egregious, opprobrious and contemptuous conduct in the manner in which the very process of the court was being abused to achieve an unlawful end of misappropriating property belonging to the party.

[173] The use of legal proceedings to perpetrate a fraud on any party must be viewed seriously. There was never any real cause of action against Dato' Ly (D5) in Suit 796. The entire action was staged, filed surreptitiously with no notice given to parties that were affected by the legal proceedings. Both the lack of capacity of the parties to the Suit 796 was not disclosed to the court and the sole purpose of the consent judgment was to take advantage of the imprimatur of the court to unlawfully obtain the ownership of property belonging to myPPP.

[174] The conspirators' conduct displays a wanton and contumacious disregard for the sanctity of our legal process. The use of consent orders obtained in fraud of the court as exemplified from the facts in this case is inimical to the due administration of justice and justify an order for exemplary damages.

[175] The locus classicus on exemplary damages is the judgment of Lord Devlin in *Rookes v Barnard* [1964] AC 1129. Lord Devlin propounded three considerations when awards of exemplary damages are being considered:

(a) the plaintiff cannot recover exemplary damages unless he is the victim of the punishable behaviour;

(b) the power to award exemplary damages must be used with restraint; and

(c) the means of the parties are material in the assessment of exemplary damages.

[176] The aforesaid principles have been applied by our Court of Appeal in *Tradewinds Properties Sdn Bhd v Zulhkiple bin A Bakar & Ors* [2019] 1 MLJ 421 and *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784.

[177] More specifically, in *Sambaga Valli*, the Court of Appeal held as follows:

> [33] The exemplary damages or punitive damages — the two terms now regarded as

interchangeable — are additional damages awarded with reference to the conduct of the defendant, to signify disapproval, condemnation or denunciation of the defendant's tortious act, and to punish the defendant. Exemplary damages may be awarded where the defendant has acted with vindictiveness or malice, or where he has acted with a 'contumelious disregard' for the right to the plaintiff. The primary purpose of an award of exemplary damages may be deterrent, or punitive and retributory, and the award may also have an important function in vindicating the rights of the plaintiff (see *Rookes v Barnard* [1964] 1 All ER 347 ... *Broome v Cassell & Co* [1971] 2 QB 354 ...).

[178] The Court of Appeal in *Sambaga Valli* also applied the three principles considerations in assessing the quantum of exemplary damages in the case. It was also emphasised by the court that:

... exemplary damages are not intended to compensate the plaintiff and are not recoverable as a matter of right. The amount of the exemplary damages award is left to the judge's discretion and is determined by considering the character of the defendant's misconduct, the nature and extension of the plaintiff's injury and the means of the defendant. The quantum of exemplary damages to be awarded must be appropriate to the wrongdoing inflicted to the parties involved.

[179] Based on the aforesaid authorities, I hereby order that Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) and Dato' Ly (D5) are to pay exemplary damages in the sum of RM150,000 each to the Director General of Insolvency.

[180] As regards the costs of the action, I order that a sum of RM300,000 be paid by Tan Sri Kayveas (D1), Datuk Chandrakumanan (D4) and Dato' Ly (D5) jointly and severally to the plaintiffs subject to allocator. The amount includes the numerous applications filed by the plaintiffs for interlocutory and quit timet injunctions which this court have granted in favour of the plaintiffs with costs in the cause.

[181] As the plaintiffs have failed to establish their case against Vijayan (D6), Shanker Kandasamy (D7), Kumara Raja (D8) and Datuk Lau (D9), I order that the plaintiffs do pay costs subject to allocator of RM35,000 to Vijayan (D6), Shanker Kandasamy (D7) and Kumara Raja (D8) collectively and costs subject to allocator of RM35,000 to Datuk Lau (D9) personally.

Claim allowed in part.

Reported by K Selvaraju